

AL-12-000-9853



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN - 8 2012

THE ADMINISTRATOR

The Honorable Ed Markey
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Markey:

I am pleased to renew the National Advisory Council for Environmental Policy and Technology in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The National Advisory Council for Environmental Policy and Technology is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The National Advisory Council for Environmental Policy and Technology will be in effect for two years from the date the charter is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Clara Jones in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3701.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa P. Jackson", written over a horizontal line.

Lisa P. Jackson

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

NATIONAL ADVISORY COUNCIL FOR ENVIRONMENTAL POLICY AND TECHNOLOGY

1. Committee's Official Designation (Title):

National Advisory Council for Environmental Policy and Technology

2. Authority:

This charter renews the National Advisory Council for Environmental Policy and Technology (NACEPT) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The NACEPT is in the public interest and supports EPA in performing its duties and responsibilities.

3. Objectives and Scope of Activities:

NACEPT's scope involves advising the EPA Administrator on broad, crosscutting issues associated with EPA's environmental management on matters relating to activities and functions under federal environmental statutes, executive orders, regulations, and policies. NACEPT advises on ways to improve the development and implementation of domestic and international environmental management policies, programs, and technologies.

The major objectives are to provide advice and recommendations on:

- a. Identifying approaches to improve the development and implementation of domestic and international environmental management policies and programs;
- b. Providing guidance on how EPA can most efficiently and effectively implement innovative approaches throughout the Agency and its programs;
- c. Identifying approaches to enhance information and technology planning;
- d. Fostering improved approaches to environmental management in the fields of economics, finance, and technology;
- e. Increasing communication and understanding among all levels of government, business, non-governmental organizations, and academia, with the goal of increasing non-federal resources and improving the effectiveness of federal and non-federal resources directed at solving environmental problems;

- f. Implementing statutes, executive orders and regulations; and
- g. Reviewing progress in implementing statutes, executive orders and regulations.

4. Description of Committee's Duties:

The duties of the NACEPT are solely to provide advice to EPA.

5. Official(s) to Whom the Committee Reports:

NACEPT will submit advice and recommendations and report to the EPA Administrator through the Office of Federal Advisory Committee Management and Outreach.

6. Agency Responsible for Providing the Necessary Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Federal Advisory Committee Management and Outreach.

7. Estimated Annual Operating Costs and Work Years:

The estimated annual operating cost of the NACEPT Council and its subcommittees is \$600,000 which includes 2.5 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the DFO. The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

NACEPT generally meets three times a year. Meetings may occur approximately once every four months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the NACEPT will hold open meetings unless the Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of section 552b of title 5, United States Code. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the NACEPT.

10. Duration and Termination:

NACEPT will be examined annually and will exist until the EPA determines the committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After the initial two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

The NACEPT Council will be composed of approximately twenty-five (25) members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from federal, state, local and tribal governments, the finance, banking, and legal communities, business and industry, professional and trade associations, environmental advocacy groups, national and local environmental non-profit groups, including public interest groups, and academic institutions.

12. Subgroups:

EPA, or NACEPT with EPA approval, may form NACEPT subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the NACEPT for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

May 31, 2012

Agency Approval Date

June 1, 2012

GSA Consultation Date

JUN - 8 2012

Date Filed with Congress

EDWARD J. MARKEY OF MASSACHUSETTS
RANKING DEMOCRATIC MEMBER

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

February 20, 2013

The Honorable Lisa P. Jackson
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

Dear Administrator Jackson,

I write to you today regarding the recent announcement that BP has plead guilty to a number of felony charters in connection with the 2010 Deepwater Horizon disaster, including Obstruction of Congress.¹ Specifically, I want to urge you not to end the bar against BP profiting from federal contracts until BP makes a full and complete accounting of how it came to obstruct a congressional investigation of the Deepwater Horizon disaster and finally turns over documents requested during that investigation and repeatedly since.²

In November 2012, BP pled guilty to several felonies, including Obstruction of Congress, and agreed to pay a \$500,000 fine and serve 5 years in probation.³ In that guilty plea, BP admitted that it gave false and misleading information about the Deepwater Horizon disaster to me in my previous capacity as Chairman of the Energy and Commerce Committee's Subcommittee on Energy and Environment, which was investigating the incident during spring and summer 2010. As part of that investigation, I asked BP in May 2010 to provide me with estimates of the flow rate of oil from the damaged Deepwater Horizon drilling rig. In both congressional testimony and in response to official Subcommittee correspondence, BP informed me that it believed the maximum flow rate rig was just 5,000 barrels of oil per day, a figure that was far too optimistic. In reality, BP had internal correspondence at that time that suggested the flow rate was much higher, possibly even 100,000 barrels per day. Considering the that Flow Rate Technical Group eventually determined that the flow rate was actually between 53,000 and 62,000 barrels per day,⁴ these secret, internal estimates were far more accurate and complete than the overly optimistic estimations made to me.

¹ See BP Guilty Plea, Filed November 15, 2012, available at <http://www.justice.gov/iso/opa/resources/43320121115143613990027.pdf>.

² See Letter from Ed Markey to Lamar McKay, May 14, 2010, available at <http://globalwarming.markey.house.gov/files/LTTR/051410MarkeyBP.pdf>; Letter from Ed Markey to Robert Dudley, December 3, 2010; Additional documents available at: <http://markey.house.gov/rep-markeys-investigation-bp-oil-spill-flow-rate>; Letter from Ed Markey to Robert Dudley, February 20, 2013 (attached).

³ 18 U.S.C. § 1505.

⁴ Joel Achenbach and David A. Fahrenthold, *Oil Spill Dumped 4.9 Million Barrels into Gulf of Mexico, Latest Measure Shows*, Washington Post, August 3, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/02/AR2010080204695.html>

A few weeks after the BP guilty plea was announced, the Environmental Protection Agency ("EPA") "announced that it has temporarily suspended BP Exploration and Production, Inc., BP PLC and named affiliated companies (BP) from new contracts with the federal government." The EPA took this action "due to BP's lack of business integrity as demonstrated by the company's conduct with regard to the Deepwater Horizon blowout, explosion, oil spill, and response, as reflected by the filing of a criminal information."⁵

I applaud you and the EPA for taking this step, and encourage you not to lift the debarment once the civil litigation between BP and the federal government is resolved. I firmly believe that the debarment should not be lifted until BP answers a number of critical questions about how and why it obstructed a Congressional investigation.

While BP has admitted its guilt, we still don't know how and why BP's process for responding to congressional inquiries failed so completely. We don't know why BP chose to tell me the flow rate was 5,000 barrels of oil per day when some BP employees were telling BP executives that "We should be very cautious standing behind a 5,000 [barrels of oil per day] figure as our modeling shows that this well could be making anything up to ~ 100,000 [barrels of oil per day] depending on a number of unknown variables. . . ."⁶ We don't know why BP assigned the task of responding to my inquiries to David Rainey, a man who had "no prior experience in spill estimation," and who reportedly used Wikipedia entries to educate himself about the topic during the spring of 2010.⁷ We don't know when BP learned that it had relayed inaccurate and incomplete information to Congress about the flow rate and what steps it took in response to learning of its mistakes. We don't even know what actions BP has taken to improve its processes for responding to Congressional inquiries. On top of all that, BP still has yet to provide me with all the documents and information that I requested back during the spring and summer of 2010.

I have written BP a letter, which is attached, that seeks to answer these questions and again asks for the documents that BP has yet to provide me. Additionally, this letter asks BP to make a full accounting of how and why its process for responding to Congressional inquiries broke down and a comprehensive list of all actions that BP has taken to ensure that its congressional response processes never break down again.

⁵ "BP Temporarily Suspended from New Contracts with the Federal Government," EPA Press Release, November 28, 2012, available at <http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/2aaf1c1dc80c969885257abf006dafb0!OpenDocument>

⁶ See Felony Information of BP, November 15, 2012, at paragraph 40, available at <http://www.justice.gov/iso/opa/resources/73920121115143627533671.pdf>.

⁷ See Felony Indictment of David Rainey, November 14, 2012, at paragraph 7, available at <http://www.justice.gov/iso/opa/resources/27820121115143658328449.pdf>; see also Felony Indictment of David Rainey, November 14, 2012, at paragraph 25, available at <http://www.justice.gov/iso/opa/resources/27820121115143658328449.pdf> ("On or about May 21, 2010, defendant RAINEY began working on a response to the May 14 Congressional request. Defendant RAINEY was the primary source of flow rate information for BP's eventual written response to Congress on or about May 24, 2010 (the 'BP Response') that continued to embrace 5,000 BOPD as the 'best guess' estimate.")

I request that you not lift the debarment until BP provides me with a full and complete response to my letter, along with all the requested documents.

Thank you very much for your attention to this important matter. I request that you respond to this letter by March 6, 2013. If you have any questions or concerns, please have your staff contact Morgan Gray or Justin Slaughter at 202-225-6065.

Sincerely,

A handwritten signature in black ink, reading "Edward J. Markey". The signature is fluid and cursive, with the first name "Edward" and last name "Markey" clearly legible.

Edward J. Markey
Ranking Democratic Member



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 07 2013

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

The Honorable Edward J. Markey
United States House of Representatives
Washington, DC 20515

Dear Congressman Markey:

Thank you for your letter to Administrator Lisa P. Jackson, dated February 20, 2013, concerning the Notice of Suspension the Environmental Protection Agency issued against BP plc and its affiliates on November 28, 2012. In your letter, you request that the EPA not end the suspension until BP makes a full and complete accounting of how it came to obstruct a congressional investigation of the Deepwater Horizon disaster and turns over documents requested during that investigation and repeatedly since.

The BP Suspension is an on-going matter before me so I am not at liberty to discuss any details. I have incorporated your letter in the administrative record. Please be assured that I will carefully consider it along with the other evidence in this case before making a final decision.

Again, thank you for your letter. If you have any further questions, please contact Christina Moody in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, which appears to read "Richard A. Pelletier", is written over a horizontal line.

Richard A. Pelletier
Suspension and Debarment Official

DOC HASTINGS, WA
CHAIRMAN
DON YOUNG, AK
JOHN J. DUNCAN, JR., TN
LOUIE GOHMERT, TX
ROB BISHOP, UT
DOUG LAMBORN, CO
ROBERT J. WITTMAN, VA
PAUL C. BROUN, GA
JOHN FLEMING, LA
MIKE COFFMAN, CO
TOM MCCLINTOCK, CA
GLENN THOMPSON, PA
JEFF DENHAM, CA
DAN BENISHEK, MI
DAVID RIVERA, FL
JEFF DUNCAN, SC
SCOTT R. TIPTON, CO
PAULA A. GOSAR, AZ
RAUL R. LABRADOR, ID
KRISTI L. NOEM, SD
STEVE SOUTHERLAND II, FL
BILL FLORES, TX
ANDY HARRIS, MD
JEFFREY M. LANDRY, LA
CHARLES J. "CHUCK" FLEISCHMANN, TN
JON RUNYAN, NJ
BRIAN JOHNSON, OH

TODD YOUNG
CHIEF OF STAFF

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

March 3, 2011

EDWARD J. MARKEY, MA
RANKING DEMOCRATIC MEMBER
DALE E. KILDEE, MI
PETER A. DEFazio, OR
ENI F.H. FALCOMAYAGA, AS
FRANK PALLONE, JR., NJ
GRACE F. NAPOLITANO, CA
RUSH D. HOLT, NJ
RAUL M. GRIJALVA, AZ
MADELINE Z. BORDALLO, GU
JIM COSTA, CA
DAN BOREN, OK
GREGORIO KILU CAMACHO SABLON, CNMI
MARTIN HEINRICH, NM
BEN RAY LUJAN, NM
DONNA M. CHRISTENSEN, VI
JOHN P. SARBANES, MD
BETTY SUTTON, OH
NIKI TSONGAS, MA
PEDRO R. PIERLUISI, PR
JOHN GARAMENDI, CA
COLLEEN W. HANABUSA, HI

JEFFREY DUNCAN
DEMOCRATIC STAFF DIRECTOR

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

We write to request information and express our concerns regarding efforts to study the potential impacts of hydraulic fracturing and oversee the disposal of associated wastes in light of additional disclosures made this week in The New York Times.¹

As you know, on Sunday The New York Times reported that millions of gallons of drilling wastewater, which often has radioactive radium contaminants in it at levels that far exceed the safe drinking water standards, have been hauled to treatment plants and dumped into surface waters without first removing the radium. On Tuesday, The New York Times² also indicated that residual wastewater salt and sludge, which can contain more concentrated levels of radium and other materials, can be spread as a method to de-ice the roadways in the winter and for dust suppression in the summer, after which it can also migrate into sources of drinking water supplies. Today, The New York Times³ reported that EPA recently decided not to model and closely assess the threat of radioactive drilling wastewater being discharged into rivers as part of its broader, Congressionally-mandated study on any connection between hydraulic fracturing and the safety of our drinking water supply. This decision, if true and in light of the disclosures made by The New York Times, is unwise, and we urge you to immediately reverse it.

We also request your assistance in responding to the following questions and requests no later than close of business on Friday, March 25, 2011:

¹ Regulation Lax as Gas Wells' Tainted Water Hits River By Ian Urbina, Published: February 26, 2011

see: <http://www.nytimes.com/2011/02/27/us/27gas.html?hp>

² <http://www.nytimes.com/2011/03/02/us/02gas.html?hp>

³ http://www.nytimes.com/2011/03/04/us/04gas.html?_r=1&hp=&adxnnl=1&adxnnlx=1299168232-Z56civJ0D6Vhvrwk8ZM7Q

1. Today's The New York Times article reports that as part of its Congressionally-mandated study of hydraulic fracturing, EPA has decided not to study
 - a) Modeling of wastewater from hydraulic fracturing that contains radioactive radium that is passed through sewage plants before it is discharged into waterways;
 - b) Toxic air emissions released during the drilling process;
 - c) The potential that toxic or radioactive substances that are found in wastewater from hydraulic fracturing, the sludge from which can be spread on crops as fertilizer, can enter the food web through absorption into crops.
 - d) The potential that exposures to the radioactive radium contained in drilling waste could harm workers who handle it.

For each of the above potential topics of study, please indicate i) whether it is true that EPA decided not to pursue information related to the topic, ii) if so, on what basis, iii) whether, in light of the public health concerns raised in The New York Times articles, you intend to reverse any such decisions and iv) if not, why not.

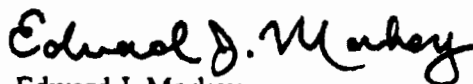
2. Today's The New York Times article states that a draft version of the EPA's 2004 study on hydraulic fracturing cited a case of possible contamination of a drinking water aquifer by fracturing fluids, and said that there could be dangerous levels of contamination contained in the fluids. These references were reportedly removed from the final report.
 - a) Please provide a copy of each draft of this 2004 report.
 - b) Please indicate which EPA (or other) officials were responsible for the decision to delete this information from the final report.
 - c) Please additionally provide a copy of all documents in EPA's possession (including reports, emails, correspondence, memos, phone or meeting minutes or other materials) that relate to any allegation or substantiation of cases in which hydraulic fracturing (including the fluids use to conduct it) has led to the contamination of sources of drinking water or drinking water itself.
- 3) Today's The New York Times quotes an internal EPA memo that states that "[wastewater] Treatment plants are not allowed under federal law to process mystery liquids, regardless of what the state tells them," reportedly in reference to a Pennsylvania regulator's decision to allow sewage treatment plants to process drilling wastes even without knowing what substances they contain. Is this true? Please provide legal justification for your response, and, if it is the Agency's view that this statement is true, please describe the steps you are taking to ensure that State regulators promulgate regulations that comply with federal law going forward.
- 4) Today's The New York Times also quotes an internal EPA document that states "The bottom line is that under the Clean Water Act, dilution is not the solution to pollution," reportedly in reference to a Pennsylvania decision to allow sewage plants to process drilling waste even though they do not remove radioactive radium from these materials before releasing them into waterways. According to the article, an EPA memo also states, "Sewage treatment plants are legally obligated to treat not dilute the waste." "These plants are breaking the law." "Everyone is looking the other way." Is it true that sewage treatment plants are prohibited from diluting this waste in lieu of treating it to remove the radioactive radium? Please

provide legal justification for your response, and, if it is the Agency's view that this statement is true, please describe the steps you are taking to ensure that State regulators promulgate regulations that comply with federal law going forward.

- 5) According to documents released by The New York Times, as sewage plants process hydraulic fracturing wastewater they are left with a concentrated sludge that has substantially higher radioactivity, salts and other substances than the wastewater itself. Sludge can also collect inside the drilling pipes at well sites, in waste pits and in holding tanks. Radioactivity also concentrates in 'pipe scale'. This scale is formed when barium and strontium, also found in drilling waste, collect on the pipes, and attract radioactive radium. The levels of radioactivity in pipe scale and treatment filters may pose a substantial risk for workers and others who handle these materials, in fact one EPA official believes the radioactivity is high enough to require special disposal.⁴
- a) What steps do you plan to take to ensure that workers who may come into contact with these materials are monitored to ensure they are not exposed to high levels of radioactive radium?
 - b) Does EPA believe that sludge that may contain drilling waste that includes radioactive radium or other toxic materials can be used as agricultural fertilizer or in road de-icing or dust reduction processes? Why or why not, and if not, what steps do you plan to take to ensure that State regulators are aware of any concerns EPA might have regarding this practice.

Thank you for your assistance and cooperation in responding to this request. Should you have any questions, please have your staff contact Dr. Michal Freedhoff of the House Natural Resources Committee staff, Dr. Avenel Joseph of my staff at 202-225-2836 or Andrea Burgess of Rep. Holt's staff at 202-225-5801.

Sincerely,



Edward J. Markey
Ranking Member
Natural Resources Committee



Rush D. Holt
Ranking Member
Subcommittee on Energy and
Mineral Resources

cc: The Honorable Doc Hastings
Chairman
Natural Resources Committee

cc: The Honorable Doug Lamborn
Chairman
Subcommittee on Energy and
Mineral Resources

⁴ <http://www.nytimes.com/interactive/2011/02/27/us/natural-gas-documents-1.html#document/p389>

AL-11-000-3396

DOC HASTINGS, WA
CHAIRMAN
DON YOUNG, AK
JOHN J. DUNCAN, JR., TN
LOUIE GOHMERT, TX
ROB BISHOP, UT
DOUG LAMBORN, CO
ROBERT J. WITTMAN, VA
PAUL C. BROUN, GA
JOHN FLEMING, LA
MIKE COFFMAN, CO
TOM MCCLINTOCK, CA
GLENN THOMPSON, PA
JEFF DENHAM, CA
DAN BENISHEK, MI
DAVID RIVERA, FL
JEFF DUNCAN, SC
SCOTT R. TIPTON, CO
PAUL A. GOSAR, AZ
RAUL R. LABRADOR, ID
KRISTI L. NOEM, SD
STEVE SOUTHERLAND II, FL
BILL FLORES, TX
ANDY HARRIS, MD
JEFFREY M. LANDRY, LA
CHARLES J. "CHUCK" FLEISCHMANN, TN
JON RUNYAN, NJ
BILL JOHNSON, OH

TODD YOUNG
CHIEF OF STAFF

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

EDWARD J. MARKEY, MA
RANKING DEMOCRATIC MEMBER
DALE E. KILDEE, MI
PETER A. DEFazio, OR
ENI F.H. FALCOMAYAGA, AS
FRANK PALLONE, JR., NJ
GRACE F. NAPOLITANO, CA
RUSH D. HOLT, NJ
RAUL M. GRIJALVA, AZ
MADELINE Z. BORDALLO, GU
JIM COSTA, CA
DAN BOREN, OK
GREGORIO KILU CAMACHO SABLAN, CNMI
MARTIN HEINRICH, NM
BEN RAY LUJÁN, NM
DONNA M. CHRISTENSEN, VI
JOHN P. SARBANES, MD
BETTY SUTTON, OH
NIKI TSONGAS, MA
PEDRO R. PIERLUSI, PR
JOHN GARAMENDI, CA
COLLEEN W. HANABUSA, HI

JEFFREY DUNCAN
DEMOCRATIC STAFF DIRECTOR

March 3, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

We write to request information and express our concerns regarding efforts to study the potential impacts of hydraulic fracturing and oversee the disposal of associated wastes in light of additional disclosures made this week in The New York Times.¹

As you know, on Sunday The New York Times reported that millions of gallons of drilling wastewater, which often has radioactive radium contaminants in it at levels that far exceed the safe drinking water standards, have been hauled to treatment plants and dumped into surface waters without first removing the radium. On Tuesday, The New York Times² also indicated that residual wastewater salt and sludge, which can contain more concentrated levels of radium and other materials, can be spread as a method to de-ice the roadways in the winter and for dust suppression in the summer, after which it can also migrate into sources of drinking water supplies. Today, The New York Times³ reported that EPA recently decided not to model and closely assess the threat of radioactive drilling wastewater being discharged into rivers as part of its broader, Congressionally-mandated study on any connection between hydraulic fracturing and the safety of our drinking water supply. This decision, if true and in light of the disclosures made by The New York Times, is unwise, and we urge you to immediately reverse it.

We also request your assistance in responding to the following questions and requests no later than close of business on Friday, March 25, 2011:

¹ Regulation Lax as Gas Wells' Tainted Water Hits River By Ian Urbina, Published: February 26, 2011

see: <http://www.nytimes.com/2011/02/27/us/27gas.html?hp>

² <http://www.nytimes.com/2011/03/02/us/02gas.html?hp>

³ http://www.nytimes.com/2011/03/04/us/04gas.html?_r=1&hp=&adxnnl=1&adxnnlx=1299168232-Z56civJ0D6Vhvrwk8ZM7Q

1. Today's The New York Times article reports that as part of its Congressionally-mandated study of hydraulic fracturing, EPA has decided not to study
 - a) Modeling of wastewater from hydraulic fracturing that contains radioactive radium that is passed through sewage plants before it is discharged into waterways;
 - b) Toxic air emissions released during the drilling process;
 - c) The potential that toxic or radioactive substances that are found in wastewater from hydraulic fracturing, the sludge from which can be spread on crops as fertilizer, can enter the food web through absorption into crops.
 - d) The potential that exposures to the radioactive radium contained in drilling waste could harm workers who handle it.

For each of the above potential topics of study, please indicate i) whether it is true that EPA decided not to pursue information related to the topic, ii) if so, on what basis, iii) whether, in light of the public health concerns raised in The New York Times articles, you intend to reverse any such decisions and iv) if not, why not.

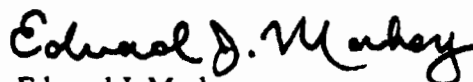
2. Today's The New York Times article states that a draft version of the EPA's 2004 study on hydraulic fracturing cited a case of possible contamination of a drinking water aquifer by fracturing fluids, and said that there could be dangerous levels of contamination contained in the fluids. These references were reportedly removed from the final report.
 - a) Please provide a copy of each draft of this 2004 report.
 - b) Please indicate which EPA (or other) officials were responsible for the decision to delete this information from the final report.
 - c) Please additionally provide a copy of all documents in EPA's possession (including reports, emails, correspondence, memos, phone or meeting minutes or other materials) that relate to any allegation or substantiation of cases in which hydraulic fracturing (including the fluids use to conduct it) has led to the contamination of sources of drinking water or drinking water itself.
- 3) Today's The New York Times quotes an internal EPA memo that states that "[wastewater] Treatment plants are not allowed under federal law to process mystery liquids, regardless of what the state tells them," reportedly in reference to a Pennsylvania regulator's decision to allow sewage treatment plants to process drilling wastes even without knowing what substances they contain. Is this true? Please provide legal justification for your response, and, if it is the Agency's view that this statement is true, please describe the steps you are taking to ensure that State regulators promulgate regulations that comply with federal law going forward.
- 4) Today's The New York Times also quotes an internal EPA document that states "The bottom line is that under the Clean Water Act, dilution is not the solution to pollution," reportedly in reference to a Pennsylvania decision to allow sewage plants to process drilling waste even though they do not remove radioactive radium from these materials before releasing them into waterways. According to the article, an EPA memo also states, "Sewage treatment plants are legally obligated to treat not dilute the waste." "These plants are breaking the law." "Everyone is looking the other way." Is it true that sewage treatment plants are prohibited from diluting this waste in lieu of treating it to remove the radioactive radium? Please

provide legal justification for your response, and, if it is the Agency's view that this statement is true, please describe the steps you are taking to ensure that State regulators promulgate regulations that comply with federal law going forward.

- 5) According to documents released by The New York Times, as sewage plants process hydraulic fracturing wastewater they are left with a concentrated sludge that has substantially higher radioactivity, salts and other substances than the wastewater itself. Sludge can also collect inside the drilling pipes at well sites, in waste pits and in holding tanks. Radioactivity also concentrates in 'pipe scale'. This scale is formed when barium and strontium, also found in drilling waste, collect on the pipes, and attract radioactive radium. The levels of radioactivity in pipe scale and treatment filters may pose a substantial risk for workers and others who handle these materials, in fact one EPA official believes the radioactivity is high enough to require special disposal.⁴
- a) What steps do you plan to take to ensure that workers who may come into contact with these materials are monitored to ensure they are not exposed to high levels of radioactive radium?
 - b) Does EPA believe that sludge that may contain drilling waste that includes radioactive radium or other toxic materials can be used as agricultural fertilizer or in road de-icing or dust reduction processes? Why or why not, and if not, what steps do you plan to take to ensure that State regulators are aware of any concerns EPA might have regarding this practice.

Thank you for your assistance and cooperation in responding to this request. Should you have any questions, please have your staff contact Dr. Michal Freedhoff of the House Natural Resources Committee staff, Dr. Avenel Joseph of my staff at 202-225-2836 or Andrea Burgess of Rep. Holt's staff at 202-225-5801.

Sincerely,



Edward J. Markey
Ranking Member
Natural Resources Committee



Rush D. Holt
Ranking Member
Subcommittee on Energy and
Mineral Resources

cc: The Honorable Doc Hastings
Chairman
Natural Resources Committee

cc: The Honorable Doug Lamborn
Chairman
Subcommittee on Energy and
Mineral Resources

⁴ <http://www.nytimes.com/interactive/2011/02/27/us/natural-gas-documents-1.html#document/p389>

AL-09-000-1079



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 29 2009

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Edward J. Markey
Chairman
Select Committee on Energy Independence
and Global Warming
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This letter is in response to your request for Ms. Shannon Kenny, an employee of the Environmental Protection Agency (EPA), to serve on a detail to the Select Committee on Energy Independence and Global Warming from February 9, 2009 through August 31, 2009. We are pleased to allow her this opportunity. Ms. *Exp. 6* should plan to report back to EPA on September 1, 2009.

If you have any questions, please contact me or have your staff contact Clara Jones in my office at (202) 564-3701.

Sincerely,

A handwritten signature in cursive script that reads "Joyce K. Frank".

Joyce K. Frank
Acting Associate Administrator

EDWARD J. MARKEY, MASSACHUSETTS
 CHAIRMAN
 EARL BLUMENAUER, OREGON
 JAY BYRDE, WASHINGTON
 JOHN R. LARSON, CONNECTICUT
 HILDA L. SOLIS, CALIFORNIA
 STEPHANIE HERBERT SANDLIN, SOUTH DAKOTA
 EMANUEL CLAVER, MISSOURI
 JOHN J. HALL, NEW YORK
 JERRY MCNERNEY, CALIFORNIA



F. JAMES SENSENBRENNER, JR., WISCONSIN
 RANKINS MESSER
 JOHN S. SHADESS, ARIZONA
 GREG WALDEN, OREGON
 CANDICE S. MILLER, MICHIGAN
 JOHN SULLIVAN, OKLAHOMA
 MARSHA BLACKBURN, TENNESSEE

**Select Committee on
 Energy Independence and Global Warming
 U.S. House of Representatives**

May 12, 2008

The Honorable Stephen L. Johnson
 Administrator
 U.S. Environmental Protection Agency
 1200 Pennsylvania Avenue, N.W.
 Washington, DC 20460

Dear Administrator Johnson:

There is a growing consensus among our nation's public health professionals that climate change poses serious public health threats to the United States. On April 9, 2008, the Select Committee on Energy Independence and Global Warming held a hearing to explore the climate change effects on health in the United State titled, "Healthy Planets, Healthy People: Global Warming and Public Health." We heard from government officials, scientific researchers, and public health professionals. The overwhelming consensus was that climate change poses a serious public health threat to the United States.

Centers for Disease Control Representative Dr. Howard Frumkin, Director of the National Center for Environmental Health and Agency for Toxic Substances and Disease Registry (ASTDR), testified at the hearing that, "The bottom line is that climate change is a very serious public health concern." In March 2008, Dr. Frumkin was also the lead author of the CDC's adaptation and mitigation strategies, *Climate Change: The Public Health Response*, published in the American Journal of Public Health. Previously in October 2007, CDC Director Dr. Julie Gerberding testified before the Senate that, "Climate change is anticipated to have a broad range of impacts on the health of Americans and the nation's public health infrastructure."

The conclusion that climate change is a threat to public health is supported by the overwhelming body of evidence produced by the EPA's own scientists, dating back to 1997. In a report titled, *Climate Change and Public Health*, the EPA directly linked carbon dioxide emissions to global warming and "risks to human health," stating:

Gasses in the atmosphere such as carbon dioxide and methane trap the sun's energy and warm the earth. This natural 'greenhouse effect' is intensified by human activities, especially the combustion of fossil fuels. Increased energy use in cars, homes, and factories raises the concentration of carbon dioxide in the atmosphere, and this can cause a variety of impacts on the global climate. As the climate changes, natural systems will be destabilized, which could pose a number of risks to human health.¹

Since that time, the EPA's contribution to numerous scientific and peer reviewed publications has reinforced this original conclusion and EPA grants have supported a large amount of research throughout the United States addressing climate change impacts on public health. In 2001, the EPA sponsored a report for the Global Change Research Program titled, *Climate Change and Human Health: the Potential Consequences of Climate Variability and Change*. This report stated:

The assessment ... makes clear that the potential health impacts are diverse and demand improved health infrastructure and enhanced, targeted research.... The future vulnerability of the U.S. population to the health impacts of climate change depends on our capacity to adapt to potential adverse changes through legislative, administrative, institutional, technological, educational, and research-related measures.²

Today the EPA is again the lead agency on the upcoming United States Climate Change Science Program Synthesis Assessment Report, *Analyses of the Effects of Global Change on Human Health and Welfare and Human Systems*.³ We look forward to the publication of this report which we understand is expected by mid-June.

I have also been encouraged to see that you have recognized the public health implication of climate change. In your denial of California's request for a waiver to proceed with state regulation of greenhouse gas emissions from motor vehicles, you stated, "Severe heatwaves are projected to intensify in magnitude and duration over the portions of the U.S. where these events already occur, with likely increases in mortality and morbidity, especially among the elderly, young and frail. Ranges of vector-borne and tick-borne diseases in North America may expand but with modulation by public health measures and other factors."⁴

Notwithstanding these conclusion by the EPA, other Agencies, and the scientific and public health community in general, the EPA has yet to conclude that greenhouse gas emissions cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. In order to clarify whether the EPA considers climate change a public health threat, I am requesting a prompt response to the following questions:

1. Do anthropogenic carbon dioxide emissions contribute to global warming? If not, why not?
2. Does global warming poses a threat to public health in the United States? If not, why not, and how do you reconcile that with your statements cited above in your denial of California's waiver request?
3. The CDC has stated very clearly that their stance on climate change is that it will have serious impacts on health in the United States. Does the EPA agree or disagree with statements made by CDC Director Dr. Julie Gerberding and ASTDR Director Dr. Howard Frumkin that climate change poses a serious public health threat in the United States? Please fully justify your response.

4. Does EPA disagree with any of the components to the CDC's public health response strategy to climate change outlined in Dr. Frumkin's paper, *Climate Change: The Public Health Response*? If so, please specifically state which aspects of the strategy the EPA disagrees with, and the basis on which EPA disagrees. If there is no disagreement, please describe any ways in which the EPA currently participates and supports this strategy. If the answer to this last question is none, please outline EPA's plans, if any, to support future to protect public health from climate change.
5. Some EPA officials and others have, in Congressional testimony, differentiated between pollutants like smog and particulate matter, which have localized impacts, and greenhouse gases, which these officials say are more "global" or "mixed" in the atmosphere. But a recently published, peer-reviewed analysis funded by EPA reached a completely different conclusion.⁵ The study found that higher levels of greenhouse gases, particularly in already-polluted urban areas, have an adverse impact on local pollution levels and actually can be shown to cause additional pollution-related deaths. How do you plan to incorporate this scientific analysis into EPA's work, testimony and other deliberations in the future? If you have no plans to incorporate the analysis, why not?

Thank you for your attention to this matter. Please respond to the questions above by May 23. If you have any questions, please contact Dr. Stephanie Herring or Dr. Michal Freedhoff of the Committee staff at 202-225-4012.

Sincerely,



Edward J. Markey
Chairman

¹ United States Environmental Protection Agency (1997) *Climate Change and Public Health* EPA 236-F-97-005.

² <http://www.jhsph.edu/nationalassessment-health/>.

³ <http://www.climate-science.gov/Library/sap/sap4-6/public-review-draft/default.htm>.

⁴ Environmental Protection Agency, California State Motor Vehicle Pollution Control Standards: Notice of Decision Denying a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles (2008) (<http://www.epa.gov/otaq/ca-waiver.htm>).

⁵ Jacobson, M.Z. (2008) On the causal link between carbon dioxide and air pollution mortality, *Geophysical Research Letters*, 35, L03809, doi:10.1029/2007GL03110



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 22 2008

OFFICE OF
RESEARCH AND DEVELOPMENT

The Honorable Edward J. Markey
Chairman, Select Committee on Energy Independence
and Global Warming
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of May 12th to Administrator Stephen Johnson of the U.S. Environmental Protection Agency (EPA) about the health impacts of climate change. I am writing on behalf of Administrator Johnson to respond to the five specific questions posed in your letter. I apologize for the delay in responding and appreciate your patience.

1. Do anthropogenic carbon dioxide emissions contribute to global warming? If not, why not?

Anthropogenic carbon dioxide emissions have a climatic warming effect. The 2007 Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) concluded that global greenhouse gas emissions, including carbon dioxide (CO₂), due to human activities have grown since pre-industrial times, with an increase of 70% between 1970 and 2004. In this report the IPCC also found that global atmospheric concentrations of CO₂, methane, and nitrous oxide have increased markedly as a result of human activities since 1750 and now far exceed pre-industrial values. The IPCC concluded that "most of the observed increase in global average temperatures since the mid-20th century is very likely due to the observed increase in anthropogenic greenhouse gas concentrations."

2. Does global warming pose a threat to public health in the United States? If not, why not, and how do you reconcile that with your statements cited above in your denial of California's waiver request?

Climatic conditions can affect health through a variety of mechanisms. The 2000 report, *Climate Change Impacts on the United States: The Potential Consequences of Climate Variability and Change* (<http://www.usgcrp.gov/usgcrp/nacc/default.htm>), concluded that certain health outcomes are known to be associated with weather and/or climate, including illnesses and deaths associated with temperature; extreme precipitation events; air pollution; water contamination; food-borne diseases; and diseases carried by mosquitoes, ticks, and rodents. Because human health is intricately bound to weather and the many complex natural systems

weather affects, it is possible that climate change will have measurable impacts on health. The 2001 EPA-sponsored report, *Human Health Consequences of Climate Variability and Change for the United States* (<http://www.usgcrp.gov/usgcrp/nacc/health/default.htm>), indicated the potential for diverse health impacts. It noted that while most of the U.S. population is protected against adverse health outcomes associated with weather and/or climate, certain demographic and geographic populations (e.g., the elderly and very young children) could be at increased risk.

More recently, the U.S. Climate Change Science Program (CCSP) released *Synthesis and Assessment Product 4.6: Analyses of the Effects of Global Change on Human Health and Welfare and Human Systems* (SAP 4.6) (<http://www.climatechange.gov/Library/sap/sap4-6/final-report/default.htm>). EPA was responsible for production of the report, which was written by a team of EPA scientists and other experts. Similar to earlier reports, SAP 4.6 found that climate change can affect human health but that "the cause-effect chain from climate change to changing patterns of health outcomes is often complex and includes factors such as initial health status, financial resources, effectiveness of public health programs, and access to medical care."

Regarding how these health issues relate to the California waiver, the Administrator referenced conclusions made by the IPCC regarding the potential health risks posed by climate change in his "Notice of Decision" signed February 29, 2008. However, the notice also stated: "While I find that the conditions related to global climate change in California are substantial, they are not sufficiently different from conditions in the nation as a whole to justify separate state standards. As the discussion above indicates, global climate change has affected, and is expected to affect, the nation, indeed the world, in ways very similar to the conditions noted in California." The Administrator also noted that the Notice of Decision "does not reflect, and nothing in this document should be construed as reflecting, my judgment regarding whether emissions of GHGs from new motor vehicles or engines cause or contribute to air pollution 'which may reasonably be anticipated to endanger public health or welfare,' which is a separate question involving different statutory provisions and criteria; nor should it be construed as reflecting my judgment regarding any issue relevant to the determination of this question."

3. The CDC has stated very clearly that their stance on climate change is that it will have serious impacts on health in the United States. Does the EPA agree or disagree with statements made by CDC Director, Dr. Julie Gerberding, and ATSDR Director, Dr. Howard Frumkin, that climate change poses a serious public health threat in the United States? Please fully justify your response.

The EPA agrees that a public health approach is important for addressing the range of potential health risks associated with climate change in the United States. The issue of whether greenhouse gases endanger public health or welfare under Section 202 of the Clean Air Act is currently before the Agency and was most recently addressed in EPA's Advance Notice of Proposed Rulemaking in response to the Supreme Court's decision in *Massachusetts v. EPA*, 129 S. Ct. 1438 (2007) (73 Fed. Reg. 44,354 (July 30, 2008)).

4. Does EPA disagree with any of the components to the CDC's public health response strategy to climate change outlined in Dr. Frumkin's paper, *Climate Change: The Public Health Response*? If so, please specifically state which aspects of the strategy the EPA disagrees with, and the basis on which EPA disagrees. If there is no disagreement, please

describe any ways in which the EPA currently participates in and supports this strategy. If the answer to this last question is none, please outline EPA's plans, if any, to support future measures to protect public health from climate change.

The extent to which the United States is able to adapt to the potential risks posed by climate change to human health may in part determine the extent to which negative impacts occur. It is noteworthy that the 2001 EPA-sponsored report also concluded that "vigilance in the maintenance and improvement of public health systems and their responsiveness to changing climate conditions and identified vulnerable subpopulations should help to protect the U.S. population from any adverse health outcomes of projected climate change." This conclusion is consistent with the arguments made by Dr. Frumkin in his paper, *Climate Change: The Public Health Response*.

To support efforts by the public health community to anticipate, manage, and ameliorate the risks posed by climate change to human health, EPA continues to actively study the potential health impacts of climate change. This effort is led by the EPA's Global Change Research Program (GCRP) in the Office of Research and Development. Highlights of the GCRP efforts include:

- An active assessment program that is studying the potential impacts of climate change on air quality and water quality, which have implications for human health. In 2008, the Program released a public review draft of a report entitled, *Assessment of the Impacts of Global Change on Regional U.S. Air Quality: A Preliminary Synthesis of Climate Change Impacts on Ground-Level Ozone* (<http://cfpub.epa.gov/ncea/cfm/recorddisplay.cfm?deid=181744>).
 - In 2005, the Program awarded two Science to Achieve Results (STAR) grants in the area of "Decision Support Systems Involving Climate Change and Public Health." The Program will issue another call for proposals, developed in partnership with CDC, related to the health impacts of climate change in 2008.
 - In 2006, the GCRP supported an update to the 2001 Health Sector Assessment, with publication of the results in *Environmental Health Perspectives*.
 - In December 2006, the Program released for public review a report entitled, *A Review of the Impacts of Climate Variability and Change on Aeroallergens and their Associated Effects*.
5. Some EPA officials and others have, in Congressional testimony, differentiated between pollutants like smog and particulate matter, which have localized impacts, and greenhouse gases, which these officials say are more "global" or "mixed" in the atmosphere. But a recently published, peer-reviewed analysis funded by EPA reached a completely different conclusion. The study found that higher levels of greenhouse gases, particularly in already-polluted urban areas, have an adverse impact on local pollution levels and actually can be shown to cause additional pollution-related deaths. How do

you plan to incorporate this scientific analysis into EPA's work, testimony, and other deliberations in the future? If you have no plans to incorporate the analysis, why not?

EPA will continue to assess the relationship between greenhouse gas emissions, local air quality, and human health. Your letter referred to a recent publication by Dr. Mark Jacobson reporting on EPA-sponsored research. The Global Change Research Program is working with the Office of Air Quality Policy and Standards in the Office of Air and Radiation to understand the implications of Dr. Jacobson's results for the Agency's ability to meet its requirements under the Clean Air Act. The Global Change Research Program will also continue to sponsor research to investigate the robustness of Dr. Jacobson's findings, which will be considered by the Agency in its future work.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may call David Piantanida, in EPA's Office of Congressional and Intergovernmental Relations, at 202-564-8318.

Best Regards,

A handwritten signature in black ink, appearing to read "George Gray", with a stylized flourish at the end.

George Gray
Assistant Administrator

AL-09-001 -6577

EDWARD J. MARKEY, MASSACHUSETTS
CHAIRMAN
EARL BLUMENAUER, OREGON
JAY INSLEE, WASHINGTON
JOHN B. LANSON, CONNECTICUT
HILDA L. BOLIS, CALIFORNIA
STEPHANIE HERSETH SANDLIN, SOUTH DAKOTA
EMANUEL CLEAVER, MISSOURI
JOHN J. HALL, NEW YORK
JERRY MCNERNEY, CALIFORNIA



F. JAMES SENSENBRENNER, JR., WISCONSIN
RANKING MEMBER
JOHN B. SHADEGG, ARIZONA
GREG WALDEN, OREGON
CANDICE S. MILLER, MICHIGAN
JOHN SULLIVAN, OKLAHOMA
MARSHA BLACKBURN, TENNESSEE

**Select Committee on
Energy Independence and Global Warming
U.S. House of Representatives**

July 13, 2009

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
1300 Pennsylvania Avenue N.W.
Washington, DC, 20460

Dear Administrator Jackson:

I write to bring to your attention the attached letter I received from Congressman F. James Sensenbrenner, Jr, the Ranking Minority Member of the House Select Committee on Energy Independence and Global Warming, regarding recent Agency actions.

Congressman Sensenbrenner has requested the Select Committee's assistance in evaluating the Agency's efforts regarding both its proposed determination that global warming emissions endanger health and public welfare and its plans to move forward to regulate such emissions from motor vehicles. He has specifically questioned whether these actions were undertaken in a manner that is consistent with your confirmation promise to ensure that under your leadership, the Agency would act using "overwhelming transparency."

I request that you promptly provide me with your response to the concerns raised by Mr. Sensenbrenner. Thank you very much for your consideration of this important matter. If you have any questions or concerns, please have your staff contact Dr. Michal Freedhoff of my staff at 225-2836.

Sincerely,

Edward J. Markey
Chairman

cc: Mr. F. James Sensenbrenner, Jr. Ranking Member
Enclosed: Letter referenced above from Ranking Member Sensenbrenner to Chairman Markey

EARL BLUMENAUER, OREGON
JAY INSLEE, WASHINGTON
JOHN B. LARSON, CONNECTICUT
STEPHANIE HERSETH SANDLIN, SOUTH DAKOTA
EMANUEL CLEAVER, MISSOURI
JOHN J. MALL, NEW YORK
JOHN SALAZAR, COLORADO
JACKIE SPEIER, CALIFORNIA

F. JAMES SENSENBRENNER, JR., WISCONSIN
RANKING MEMBER
JOHN B. SHADEGG, ARIZONA
CANDICE MILLER, MICHIGAN
JOHN SULLIVAN, OKLAHOMA
MARSHA BLACKBURN, TENNESSEE
SHELLEY CAPITO, WEST VIRGINIA

ONE HUNDRED ELEVENTH CONGRESS
Select Committee on
Energy Independence and Global Warming
U.S. House of Representatives
Washington, DC 20515

EDWARD J. MARKEY, MASSACHUSETTS
CHAIRMAN

July 8, 2009

The Honorable Edward Markey
Chairman, House Select Committee on Energy Independence and Global Warming
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Markey:

During her confirmation hearing, Administrator Jackson promised "overwhelming transparency." She said, "[a]s Administrator, I will ensure EPA's efforts to address the environmental rises of today are rooted in three fundamental values: Science-based policies and programs, adherence to the rule of law, and overwhelming transparency." Notwithstanding this promise, EPA has conducted itself under an unprecedented veil of secrecy.

I initially raised these concerns in a letter to you and Congressman Towns dated June 9, 2009.¹ In that letter I cited two incidents. First, Mary Nichols, the head of the California Air Resources Board (CARB), revealed that the White House had held a series of secret meetings as they were crafting the new Corporate Average Fuel Economy (CAFE) standards. Nichols admitted that there was a deliberate "vow of silence" surrounding the negotiations with the White House on vehicle fuel standards.² According to Nichols, "[Carol] Browner [Assistant to the President for Energy and Climate Change] quietly orchestrated private discussions from the White House with auto industry officials." Negotiators were instructed to "put nothing in writing, ever." Clearly, Browner's actions were intended to leave little to no documentation of the deliberations that lead to stringent new CAFE standards.

The second issue raised in the previous letter related to EPA's proposed endangerment finding. An official from the Office of Management and Budget (OMB) warned EPA in an interagency memo that "[m]aking a decision to regulate CO₂ under the CAA for the first time is likely to have serious economic consequences for regulated entities throughout the U.S. economy, including small businesses and small communities."³ According to Administration sources, these

¹ Letter from the Honorable F. James Sensenbrenner and Darrel Issa to the Honorable Edolphus Towns and Edward Markey (June 9, 2009).

² Colin Sullivan, Vow of Silence Key to White House-California Fuel Economy Talks, *New York Times*, May 20, 2009.

³ Ian Talley, OMB Memo: Serious Impact Likely from EPA CO₂ Rules, *Dow Jones Newswire*, May 11,

This past December, President Obama said, "[p]romoting science isn't just about providing resources—it's about protecting free and open inquiry. It's about ensuring that facts and evidence are never twisted or obscured by politics or ideology. It's about listening to what our scientists have to say, even when it's inconvenient—especially when it's inconvenient."

The email exchange documents a second instance in which EPA refused to consider alternative internal opinions and delineates an agency culture set in a predetermined course. It therefore raises substantial questions about what additional evidence may have been suppressed. EPA has become an agency determined to silence inconvenient perspectives, but as policymakers we must openly and honestly consider all reliable evidence. I therefore respectfully request that we hold a hearing to investigate the lack of transparency at EPA. I am prepared to assist in any way necessary to help prepare for such a hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "F. James Sensenbrenner, Jr.", written in a cursive style.

F. James Sensenbrenner, Jr.

Ranking Member, Select Committee on Energy Independence and Global Warming



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 03 2009

THE ADMINISTRATOR

The Honorable Edward J. Markey
Chairman
Select Committee on Energy Independence
and Global Warming
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter of August 17, 2009, concerning the request by Congressmen F. James Sensenbrenner, Jr., and Darrell Issa for additional information and documents related to the U.S. Environmental Protection Agency's (EPA or Agency) proposed endangerment and cause and contribute findings and technical support document (TSD).

The Congressmen's letter asked a number of questions and requested supporting documents related to the timeline used for developing the draft TSD as well as the role that the National Center for Environmental Economics (NCEE) and its staff played in reviewing the proposed endangerment and cause and contribute findings and the draft TSD. Many of the questions also focused on the comments of Dr. Alan Carlin, a member of NCEE. Please find enclosed a copy of EPA's response to Congressman Sensenbrenner, which includes copies of Dr. Carlin's comments on the draft TSD from 2007.

Thank you again for your letter. If you have further questions, please contact me, or your staff may contact Arvin Ganesan in EPA's Office of Congressional and Intergovernmental Affairs at 202-564-4741.

Sincerely,

A handwritten signature in black ink, which appears to read "Lisa P. Jackson", is written over the word "Sincerely,".

Lisa P. Jackson

Enclosures

cc: The Honorable Edolphus Towns, Chairman, Oversight and Government Reform
Committee (without enclosures)
The Honorable F. James Sensenbrenner, Ranking Member, Select Committee on Energy
Independence and Global Warming
The Honorable Darrell Issa, Ranking Member, Oversight and Government Reform
Committee (without enclosures)

EPA Response to July 17, 2009 Letter

- 1. Was Dr. Carlin a member of a climate group within NCEE? Was he a member of any agency-wide climate groups?**

Dr. Carlin was a member of a climate group within the National Center of Environmental Economics (NCEE), which is part of EPA's Office of Policy and Economic Innovation (OPEI). That group was tasked with reviewing the draft Technical Support Document (TSD) for EPA's proposed endangerment finding for greenhouse gases. Dr. Carlin was not formally a member of the Agency-wide workgroup on climate change, although he did attend some meetings via conference call.

- 2. Was Dr. Carlin forbidden to work on climate change issues? Was he removed from any working groups on the topic?**

Because of personal privacy interests, we cannot provide detailed information on personnel matters.

The topics on which NCEE works vary according to the types of issues that arise at EPA, and assignments made to NCEE staff in part reflect that fact. In the case of the 2009 draft TSD, NCEE's role was limited and did not extend beyond developing the comments that were submitted to the OPEI representative on the Agency-wide workgroup.

Dr. Al McGartland, the Director of NCEE, informed Dr. Carlin on March 17, 2009, that he had decided not to forward Dr. Carlin's comments on the draft TSD, in their original form, separate from the consolidated comments submitted by NCEE. Dr. McGartland instructed Dr. Carlin to move on to subjects other than climate change, including completion of work on a database and other tasks Dr. Carlin had previously been assigned.

In making decisions about utilizing staff resources, EPA supervisors routinely weigh a number of factors, including an office's priorities and an individual's duties, skills, experience and work performance. Although Dr. Carlin is currently not working on climate change issues, he is one of several NCEE staff members who is available to work on climate change projects as the need and opportunity arises within NCEE, consistent with other workload demands.

- 3. If Dr. Carlin was removed from climate issues and related working groups, who made the decision to remove him?**

According to Dr. McGartland, he made decisions regarding Dr. Carlin's climate-related and other work. Please see the response to Question 2, above.

- 4. Does EPA currently have any plans to reorganize NCEE? If so, what is the basis for the reorganization? When were such plans first discussed?**

As part of the orderly transition to new EPA leadership, the Office of the Administrator asked for briefings and related discussions on how best to deploy the personnel and functions within OPEI, which is part of the Office of the Administrator. At EPA, any potential office reorganization is considered through an internally open and transparent process in which numerous internal stakeholders, including the Agency's labor unions, are offered opportunities to engage in discussions regarding an office reorganization, consistent with the applicable laws. No final decisions have been made in this regard.

5. What was EPA's timeline for its proposed endangerment finding? How long was NCEE given to review the TSD supporting the proposed finding?

In April 2007, the Supreme Court issued its decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007), directing EPA to issue a finding as to whether greenhouse gas emissions endanger public health or welfare. Under the previous Administration, EPA prepared a draft TSD to provide a basis for making an endangerment finding in response to the Supreme Court's decision. Ultimately, that Administration decided not to propose an endangerment finding and instead issued in 2008 an Advance Notice of Proposed Rulemaking that was accompanied by the draft TSD as updated by EPA to reflect more recent scientific information. The public was given an opportunity to comment on the TSD, and EPA staff reviewed those comments and began the process of revising the draft TSD as appropriate.

On February 4, 2009, staff briefed me on the status of their progress on the endangerment issue. At the end of this briefing I stated that I wanted staff to complete their work on the TSD so that I could make determinations on whether greenhouse gases from motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. Then and now, I felt strongly that too much time had passed since the Supreme Court's decision in *Massachusetts v. EPA*, and that it was essential for the Agency to carry out its legal obligation in an expedited manner.

Considering the progress EPA staff made, I instructed staff to complete a proposed endangerment finding and accompanying draft TSD for my signature by mid-April of this year. As is typical in such processes, the specific details of the schedule for the endangerment proposal were developed by staff in the responsible office (in this case, the Office of Air and Radiation) considering the scope of the task and the associated workload. The TSD was updated and underwent internal EPA review by an EPA workgroup, which included representatives from NCEE, from March 9 – 16, 2009. The workgroup's Final Agency Review meeting regarding the draft TSD was held on March 18, 2009. The TSD, along with the draft proposal, was submitted to the Office of Management and Budget for formal interagency review on March 20, 2009. OMB returned the package to EPA with approval for final signature on April 16, 2009. I signed the proposal on April 17, 2009.

EPA Response to July 17, 2009 Letter

- 1. Was Dr. Carlin a member of a climate group within NCEE? Was he a member of any agency-wide climate groups?**

Dr. Carlin was a member of a climate group within the National Center of Environmental Economics (NCEE), which is part of EPA's Office of Policy and Economic Innovation (OPEI). That group was tasked with reviewing the draft Technical Support Document (TSD) for EPA's proposed endangerment finding for greenhouse gases. Dr. Carlin was not formally a member of the Agency-wide workgroup on climate change, although he did attend some meetings via conference call.

- 2. Was Dr. Carlin forbidden to work on climate change issues? Was he removed from any working groups on the topic?**

Because of personal privacy interests, we cannot provide detailed information on personnel matters.

The topics on which NCEE works vary according to the types of issues that arise at EPA, and assignments made to NCEE staff in part reflect that fact. In the case of the 2009 draft TSD, NCEE's role was limited and did not extend beyond developing the comments that were submitted to the OPEI representative on the Agency-wide workgroup.

Dr. Al McGartland, the Director of NCEE, informed Dr. Carlin on March 17, 2009, that he had decided not to forward Dr. Carlin's comments on the draft TSD, in their original form, separate from the consolidated comments submitted by NCEE. Dr. McGartland instructed Dr. Carlin to move on to subjects other than climate change, including completion of work on a database and other tasks Dr. Carlin had previously been assigned.

In making decisions about utilizing staff resources, EPA supervisors routinely weigh a number of factors, including an office's priorities and an individual's duties, skills, experience and work performance. Although Dr. Carlin is currently not working on climate change issues, he is one of several NCEE staff members who is available to work on climate change projects as the need and opportunity arises within NCEE, consistent with other workload demands.

- 3. If Dr. Carlin was removed from climate issues and related working groups, who made the decision to remove him?**

According to Dr. McGartland, he made decisions regarding Dr. Carlin's climate-related and other work. Please see the response to Question 2, above.

- 4. Does EPA currently have any plans to reorganize NCEE? If so, what is the basis for the reorganization? When were such plans first discussed?**

As part of the orderly transition to new EPA leadership, the Office of the Administrator asked for briefings and related discussions on how best to deploy the personnel and functions within OPEI, which is part of the Office of the Administrator. At EPA, any potential office reorganization is considered through an internally open and transparent process in which numerous internal stakeholders, including the Agency's labor unions, are offered opportunities to engage in discussions regarding an office reorganization, consistent with the applicable laws. No final decisions have been made in this regard.

5. What was EPA's timeline for its proposed endangerment finding? How long was NCEE given to review the TSD supporting the proposed finding?

In April 2007, the Supreme Court issued its decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007), directing EPA to issue a finding as to whether greenhouse gas emissions endanger public health or welfare. Under the previous Administration, EPA prepared a draft TSD to provide a basis for making an endangerment finding in response to the Supreme Court's decision. Ultimately, that Administration decided not to propose an endangerment finding and instead issued in 2008 an Advance Notice of Proposed Rulemaking that was accompanied by the draft TSD as updated by EPA to reflect more recent scientific information. The public was given an opportunity to comment on the TSD, and EPA staff reviewed those comments and began the process of revising the draft TSD as appropriate.

On February 4, 2009, staff briefed me on the status of their progress on the endangerment issue. At the end of this briefing I stated that I wanted staff to complete their work on the TSD so that I could make determinations on whether greenhouse gases from motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. Then and now, I felt strongly that too much time had passed since the Supreme Court's decision in *Massachusetts v. EPA*, and that it was essential for the Agency to carry out its legal obligation in an expedited manner.

Considering the progress EPA staff made, I instructed staff to complete a proposed endangerment finding and accompanying draft TSD for my signature by mid-April of this year. As is typical in such processes, the specific details of the schedule for the endangerment proposal were developed by staff in the responsible office (in this case, the Office of Air and Radiation) considering the scope of the task and the associated workload. The TSD was updated and underwent internal EPA review by an EPA workgroup, which included representatives from NCEE, from March 9 – 16, 2009. The workgroup's Final Agency Review meeting regarding the draft TSD was held on March 18, 2009. The TSD, along with the draft proposal, was submitted to the Office of Management and Budget for formal interagency review on March 20, 2009. OMB returned the package to EPA with approval for final signature on April 16, 2009. I signed the proposal on April 17, 2009.

AL-12-001-7737



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

The Honorable Ed Markey
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Markey:

I am pleased to support the charter renewal of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Committee will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina J. Moody in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa P. Jackson", written over a horizontal line.

Lisa P. Jackson

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT SCIENTIFIC ADVISORY PANEL

1. Committee's Official Designation (Title):

Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel

2. Authority:

This charter renews the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The FIFRA SAP is in the public interest and supports EPA in performing its duties and responsibilities. The original Panel was created on November 28, 1975, pursuant to Section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by Public Law 94-140, Public Law 95-396, and Public Law 96-539. In accordance with this statute, the Panel terminated on September 30, 1981. It was reestablished by the Administrator pursuant to the Federal Advisory Committee Act (FACA) and Section 21(b) of FIFRA on April 25, 1983, and then reauthorized as a statutory committee by amendment to the FIFRA dated December 2, 1983 (Public Law 98-201). Under FIFRA (Public Law 98-201), the statutory Panel terminated on September 30, 1987. It was administratively reestablished on October 1, 1987 by the Administrator pursuant to FACA until reauthorized as a statutory Panel by amendment to the FIFRA, dated October 25, 1988 (Public Law 100-532). Section 104 of the Food Quality Protection Act of 1996 (Public Law 104-170) establishes a Science Review Board consisting of sixty scientists who shall be available to the Scientific Advisory Panel on an ad hoc basis to assist in reviews conducted by the Panel.

3. Objectives and Scope of Activities:

FIFRA SAP will provide comments, evaluations, and recommendations on pesticides and pesticide-related issues as to the impact on health and the environment of regulatory actions.

The major objectives are to provide comments, evaluations, and recommendations on:

- a. The impact on health and the environment of matters arising under Sections 6(b), 6(c) and 25(a) of FIFRA
- b. Analyses, reports and operating guidelines to improve the effectiveness and quality of scientific analyses made by EPA
- c. Analyses Guidelines to improve the effectiveness and quality of scientific testing and of data submitted to EPA
- d. Methods to ensure that pesticides do not cause "unreasonable adverse effects on the environment," as defined in Section 2 (bb) of FIFRA

- e. Major scientific studies (whether conducted by EPA or other parties) supporting actions under Sections 6(b), 6(c), and 25(a) of FIFRA
- f. Major pesticide and pesticide-related scientific studies and issues in the form of a peer review

4. Description of Committees Duties:

The duties of the FIFRA SAP are solely to provide advice to the EPA.

5. Official(s) to Whom the Committee Reports:

The FIFRA SAP will report to the EPA Administrator through the EPA's Assistant Administrator for the Office of Chemical Safety and Pollution Prevention (OCSPP).

6. Agency Responsible for Providing the Necessary Support:

The EPA will be responsible for financial and administrative support. Within the EPA, this support will be provided by the Office of Chemical Safety and Pollution Prevention (OCSPP).

7. Estimated Annual Operating Costs and Person Years:

The estimated annual operating cost of FIFRA SAP is \$1,940,000 which includes 7.0 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of the EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

The FIFRA SAP expects to meet approximately eight (8) times a year. Meetings may occur approximately once every one and a half (1½) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, FIFRA SAP will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of Section 552(b) of Title 5, United States Code. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the FIFRA SAP.

10. Duration and Termination:

This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

As required by FIFRA, the FIFRA SAP will be composed of seven members, including the Chairperson, and members will be selected from nominees provided by the National Institutes of Health (NIH) and the National Science Foundation (NSF). Members will serve as Special Government Employees (SGE) or Regular Government Employees (RGE). In selecting members, EPA will consider candidates on the basis of their professional qualifications to assess the effects of pesticides on health and the environment. To the extent feasible, the panel membership will include representation of the following disciplines: toxicology, pathology, environmental biology, and related sciences (e.g., pharmacology, biotechnology, bio-chemistry, bio-statistics).

12. Subgroups:

The EPA, or FIFRA SAP with EPA's approval, may form FIFRA SAP subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the FIFRA SAP for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

October 15, 2012

Agency Approval Date

OCT 19 2012

Date Filed with Congress

Congress of the United States
House of Representatives
Washington, DC 20515

August 8, 2012

Lisa P. Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

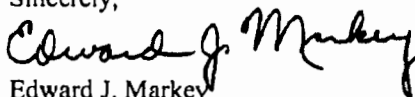
I am writing in support of EPA's proposed changes regarding demand response in both the National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines and the EPA's New Source Performance Standards.

During times of electricity shortages, many commercial, industrial, and institutional facilities that consume large amounts of electricity voluntarily participate in demand response programs that either curtail their electricity usage at the facility when demand is very high on the system or turn on emergency backup generators at the facility in order to lessen the need for power from the electricity grid. In New England, facilities like factories, hospitals, schools, water and wastewater treatment facilities, offices, municipal buildings, grocery stores, and hotels can participate in both emergency and non-emergency demand response situations. In recent years, New England has become a leader in demand response and it has helped the region control peak load growth and meet our emergency power needs.

Demand response events requiring emergency engines are rare. The only time the regional grid operator in New England has ever called for them was on August 2, 2006, for a total of 3.75 hours. If demand response had not been available that day, the entire regional electric grid could have been lost, which would have taken hours or days to restore. When black-outs do occur, all emergency generators are automatically turned on, not just those that participate in the emergency demand response program. Many residential gas generators are turned on during black-outs as well. It is both environmentally and economically preferable to use a subset of permitted generators in an emergency demand response program, rather than have many more generators—permitted and unpermitted—all operate at once during a black-out.

Demand response programs are critical to keeping our electricity grid stable, controlling electricity costs for consumers, and minimizing pollution from the power sector. I commend you and your staff for taking the time and effort to understand the importance of demand response and its role in maintaining electric reliability across our country and for making the changes embodied in the Proposed Rule. I urge you to work to finalize these changes as quickly as possible. Thank you for your consideration of these views.

Sincerely,



Edward J. Markey
Member of Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 30 2012

OFFICE OF
AIR AND RADIATION

The Honorable Edward J. Markey
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter of August 8, 2012, regarding the amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS) for Stationary Reciprocating Internal Combustion Engines, which were published in the *Federal Register* on June 7, 2012. The Administrator asked that I respond on her behalf.

We appreciate your support for the proposed amendments as they apply to stationary engines used in demand response programs. We will consider your comments, along with all of the others received, as we develop the final rule.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may call Cheryl Mackay in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2023.

Sincerely,

A handwritten signature in black ink, which appears to read "Gina McCarthy", is positioned above the typed name.

Gina McCarthy
Assistant Administrator

COMMITTEES

ENERGY AND COMMERCE
SUBCOMMITTEE ON
ENERGY AND ENVIRONMENT
CHAIRMAN

SELECT COMMITTEE ON
ENERGY INDEPENDENCE AND
GLOBAL WARMING
CHAIRMAN

NATURAL RESOURCES

EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS

2108 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2107
(202) 225-2836

DISTRICT OFFICES:

5 HIGH STREET, SUITE 101
MEDFORD, MA 02155
(781) 396-2900

188 CONCORD STREET, SUITE 102
FRAMINGHAM, MA 01702
(508) 876-2800

<http://markey.house.gov>

Congress of the United States
House of Representatives
Washington, DC 20515-2107

October 15, 2009

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Jackson:

As you know, a series of recent press reports have highlighted serious concerns with regard to the impacts of toxic wastes from coal-fired power plants on surface and ground water quality. In January of this year, I wrote with a series of questions regarding EPA's regulation of disposal of coal ash. EPA provided a response in mid-February, and I am now writing to follow up based on more recent information.

EPA has determined that power plants are the second largest category of dischargers of toxic pollutants in the country, with most of the toxicity of such discharges associated with metals from coal combustion wastes. The majority of these discharges are associated with disposal of coal ash and of waste captured by scrubbers installed to reduce air pollution.¹ Toxic coal ash slurry and scrubber wastes from coal-fired power plants are commonly disposed of in settling ponds – some as large as 340 acres in size. EPA has concluded that such ponds are not an effective means of removing toxic dissolved metals from such wastewater.² Toxins in such ponds can leach into ground or surface waters or can be discharged directly into surface waters. Coal ash is commonly disposed of in landfills, from which toxins can leach into groundwater or surface water. Numerous cases of such contamination have been documented across the country.³

An article published in the *New York Times* on October 12 asserted the following:⁴

- The Hatsfield Ferry plant in southwestern Pennsylvania has released tens of thousands of gallons of wastewater containing toxins into the Monongahela River,

¹ Environmental Protection Agency, Notice of Availability of Preliminary 2008 Effluent Guidelines Program Plan, 72 Fed. Reg. 61,335, 61,342 (Oct. 30, 2007).

² Environmental Protection Agency, Steam Electric Power Generating Point Source Category: 2007/2008 Detailed Study Report at pp. 3-30 to 3-60 (Aug. 2008), available at <http://epa.gov/guide/304m/2008/steam-detailed-200809.pdf>.

³ Shaila Dewan, Hundreds of Coal Ash Dumps Lack Regulation, *New York Times*, Jan. 6, 2009; Bruce Henderson, N.C. Data: Tainted water near coal-ash ponds, *Charlotte Observer*, Oct. 7, 2009.

⁴ Charles Duheg, Cleansing the Air at the Expense of Waterways, *New York Times*, Oct. 12, 2009.

which provides drinking water to 350,000 people and flows through Pittsburgh 40 miles to the North.

- 90 percent of the 313 coal-fired power plants violating the Clean Water Act since 2004 did not face fines or other penalties.
- The Hatsfield Ferry plant has had 33 violations since 2006, but has only faced \$26,000 in fines.
- 21 plants in 10 States have dumped arsenic into rivers or other waters at concentrations as much as 18 times the federal drinking water standard.
- Power plant landfills have polluted groundwater in more than a dozen States.
- EPA concluded in a 2007 report that people living near power plant landfills faced cancer risks 2000 times higher than federal health standards.

As EPA's response to my January 2009 letter explained, under the Resource Conservation and Recovery Act (RCRA), EPA determined in 1993 that certain "large-volume" coal combustion waste did not warrant regulation as hazardous waste under Subtitle C of RCRA. In 2000, EPA determined that large-volume coal combustion wastes that are co-managed with certain other wastes likewise did not warrant regulation as hazardous waste under Subtitle C, though such wastes could be regulated under rules for non-hazardous wastes if disposed of in surface impoundments or landfills. On March 7, 2009, EPA officials announced that EPA would move forward with new proposed regulations for coal combustion wastes under the Resource Conservation and Recovery Act (RCRA) by the end of 2009.

EPA has not revised its current Clean Water Act regulations for discharges from coal-fired power plants since 1982 – over a quarter century ago, and before use of scrubbers on coal-fired power plants became common. From 1994 through 2008, the Agency has repeatedly announced that it is studying the issue for potential regulation, but has taken no regulatory action. On September 14, 2009, several environmental groups gave notice to EPA of their intent to sue the Agency to require that it comply with its duties under the Clean Water Act. On September 15, 2009, EPA announced that it plans to revise its regulations under the Clean Water Act for discharges from coal-fired power plants.

As the Chairman of the House Energy and Commerce Committee's Subcommittee on Energy and Environment, which has jurisdiction over electricity generation and other energy issues, air quality regulation, regulation of solid and hazardous waste, and protection of drinking water, I am deeply concerned about the risks posed by disposal of waste from coal-fired power plants. I am encouraged that you have announced plans to take regulatory action on this matter, and intend to support swift and vigorous action to protect public health and the environment.

To assist the Subcommittee in its oversight of these issues, please respond to the following questions within 15 working days, or no later than November 5, 2009:

- Has EPA assessed the public health and environmental risks and impacts associated with disposal of coal-fired power plant wastes? If so, please provide a summary of the conclusions of such assessment and any relevant reports or

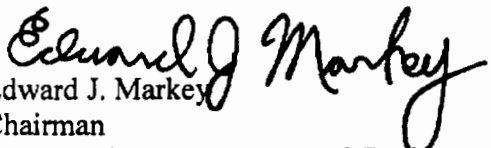
memoranda. If not, does the Agency have plans to do so, and what is the projected time frame for completion of such an assessment?

- Has EPA specifically assessed the discharges from the Hatsfield's Ferry plant? If not, why not? If so, what findings has EPA made with regard to the legality of such discharges and their effects on public health and the environment? Do these discharges present a risk to the health of the 350,000 people that, according to the article, rely on the Monongahela River for drinking water?
- Please identify all coal-fired power plants that are currently causing discharges or leaching of water contaminated by coal combustion wastes into surface or ground water (whether from settlement ponds, landfills, or other sources), where such plants are located, who owns each such plant, whether there are any known instances of illegal discharges or groundwater contamination from coal combustion wastes at such plant, and what enforcement actions, if any, have been taken as a result.
- Does EPA, or do State authorities, monitor wastewater discharges from coal-fired power plants and groundwater in proximity to coal combustion waste disposal facilities? If not, why not? If so, what does such monitoring show with regard to risks to public health or the environment from direct discharges or leakage of toxins to ground or surface water?
- If the assertions of the *New York Times* article cited above with regard to enforcement are accurate, what explains the low proportion of Clean Water Act violations by coal-fired power plants that result in fines or other penalties, and the seemingly mild penalties levied against the Hatsfield Ferry plant? What measures is EPA taking to step up its enforcement of the Clean Water Act and other relevant statutes against ground and surface water contamination from coal combustion wastes?
- What legal authorities does EPA have, under the Clean Water Act, RCRA, the Safe Drinking Water Act, or other statutes, to address the public health and environmental risks associated with discharge or leaching from toxic scrubber, ash, or other coal combustion wastes?
- What is EPA's projected schedule for promulgating a proposed rule and a final rule under the Clean Water Act to revise regulations governing discharges from coal-fired power plants?
- What is EPA's projected schedule for promulgating a new proposed rule and final rule addressing regulation of coal combustion wastes under RCRA? Will this rule revisit the 1993 and 2000 regulatory determinations discussed above? How will potential effects on surface and ground water be addressed in any such rule?
- Does EPA have any plans to address potential impacts of coal combustion wastes on drinking water sources under the Safe Drinking Water Act? If not, why not? If so, what is the projected scheduled for regulatory action?
- What legal authorities or mechanisms does EPA have to address risks to public health and the environment from such discharges in the interim, prior to the

effective date of any pending regulations under the statutes identified above?
What authorities do State regulators have to do so, and what mechanisms – such
as permit review – can EPA use to ensure that State regulators exercise such
authority appropriately to protect public health and the environment? How does
EPA plan to use such authorities or mechanisms?

Thank you for your prompt attention to this matter. If you have questions or concerns
regarding this letter, please have your staff contact Dr. Michal Freedhoff on my staff at
(202) 225-2836.

Sincerely,


Edward J. Markey
Chairman
Subcommittee on Energy and Environment

Cc: Honorable Henry Waxman
Chairman
Energy and Commerce Committee

Honorable Joe Barton
Ranking Member
Energy and Commerce Committee

Honorable Fred Upton
Ranking Member
Subcommittee on Energy and Environment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 06 2009

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Edward J. Markey
Chairman
Committee on Energy and Commerce
Subcommittee on Energy and Environment
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Markey:

Thank you for your letter dated October 15, 2009, to U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson that provides additional questions related to the impacts from coal-fired power plants on surface water and groundwater quality as well as the disposal of coal ash in landfills and impoundments.

EPA respects your interest in this issue and is working to provide responses to your questions soon.

Again, thank you for your letter. If you have questions, please contact me or your staff may contact Amy Hayden in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0555.

Sincerely,

A handwritten signature in black ink, appearing to read "Arvin Ganesan", is written over a horizontal line.

Arvin R. Ganesan
Deputy Associate Administrator

AL-09-001-2875

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

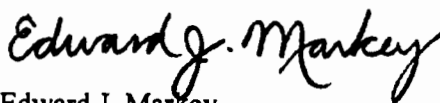
Majority (202) 225-2927
Minority (202) 225-3841
August 28, 2009

The Honorable Peter S. Silva
Assistant Administrator for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Ariel Rios Building, Mail Code 4101M
Washington, DC 20460

Dear Mr. Silva:

I am writing to request your testimony at a legislative hearing before the Subcommittee on Energy and Environment on Friday, September 11, 2009, at 10:00 a.m. in Room 2123 of the Rayburn House Office Building. The hearing will examine the Chemical Facility Anti-Terrorism Act of 2009 (H.R. 2868) and the Drinking Water System Security Act of 2009 (H.R. 3258). I ask that your testimony focus on both the Drinking Water System Security Act of 2009 and on the manner in which EPA will coordinate its efforts with the Department of Homeland Security. The attachment to this letter provides information about testifying before the Committee. If you have any questions, please contact Michal Freedhoff at (202) 225-2836.

Sincerely,



Edward J. Markey
Chairman
Subcommittee on Energy and
the Environment

Enclosure

cc: The Honorable Henry A. Waxman
Chairman

The Honorable Joe Barton
Ranking Member

The Honorable Fred Upton
Ranking Member
Subcommittee on Energy and
the Environment

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOHN D. DINGELL, MICHIGAN
CHAIRMAN EMERITUS
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
FRANK PALLONE, JR., NEW JERSEY
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
ANNA G. ESHOO, CALIFORNIA
BART STUPAK, MICHIGAN
ELLIOT L. ENGEL, NEW YORK
GENE GREEN, TEXAS
DIANA DEGETTE, COLORADO
VICE CHAIRMAN
LOIS CAPPS, CALIFORNIA
MIKE DOYLE, PENNSYLVANIA
JANE HARMAN, CALIFORNIA
JAN SCHAKOWSKY, ILLINOIS
CHARLES A. GONZALEZ, TEXAS
JAY INSLEE, WASHINGTON
TAMMY BALDWIN, WISCONSIN
MIKE RUSS, ARKANSAS
ANTHONY D. WEINER, NEW YORK
JIM MATHESON, UTAH
G.K. BUTLERFIELD, NORTH CAROLINA
CHARLES MELANCON, LOUISIANA
JOHN BASHAW, GEORGIA
SANCHEZ, INDIANA
DORIS U. MATSUI, CALIFORNIA
DORNA CHRISTENSEN, VIRGIN ISLANDS
KATHY CASTOR, FLORIDA
JOHN SARABIAN, MARYLAND
CHRISTOPHER MURPHY, CONNECTICUT
ZACHARY T. SPACE, OHIO
JERRY MCNERNEY, CALIFORNIA
BETTY SUTTON, OHIO
BRUCE BRALEY, IOWA
PETER WELCH, VERMONT

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

MAJORITY (202) 225-2927
FALSMER (202) 225-2525
MINORITY (202) 225-3841

energycommerce.house.gov

JOE BARTON, TEXAS
RANKING MEMBER

RALPH M. HALL, TEXAS
FRED UPTON, MICHIGAN
CLIFF STEARNS, FLORIDA
NATHAN DEAL, GEORGIA
ED WHITFIELD, KENTUCKY
JOHN SHIMKUS, ILLINOIS
JOHN R. SHADDEG, ARIZONA
ROY BLUNT, MISSOURI
STEVE BUYER, INDIANA
GEORGE HADADNICH, CALIFORNIA
JOSEPH R. PITTS, PENNSYLVANIA
MARY BONO MACK, CALIFORNIA
GREG WALDEN, OREGON
LEE TERRY, NEBRASKA
MIKE HUGERS, MICHIGAN
SUE WILKINS MYTHILK, NORTH CAROLINA
JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA
MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE
PHIL GINGREY, GEORGIA
STEVE SCALISE, LOUISIANA

Witness Information Sheet

The following is a summary of some of the pertinent rules and procedures applicable to witnesses testifying before the Committee on Energy and Commerce:

- Witnesses should provide 150 copies of their written testimony (75 copies for subcommittee hearings) to Earley Green, Chief Clerk, in Room 2125 of the Rayburn House Office Building no later than 10:00 a.m. two business days prior to the hearing. Witnesses should also provide statements by this date in electronic format, either as a CD or via email in .pdf format to earley.green@mail.house.gov.
- At the hearing, each witness will be asked to summarize his or her written testimony in five minutes or less in order to maximize the time available for discussion and questions.
- House Rule XI clause 2(g)(4) requires that witnesses appearing in a nongovernmental capacity submit to the Committee in advance of the hearing "a curriculum vitae and a disclosure of the amount and source (by agency and program) of *each* Federal grant (or subgrant thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness." The attached form and instructions are intended to assist witnesses in complying with this requirement.
- Witnesses with disabilities should contact Committee staff to arrange any necessary accommodations.
- The jurisdiction of the Committee on Energy and Commerce is set forth in House Rule X clauses 1(f), 2, 3(e), and 4(e).
- The Committee rules governing this hearing are online at <http://energycommerce.house.gov/>.

For inquiries regarding these rules and procedures, please contact the Committee on Energy and Commerce at (202) 225-2927.

Committee on Energy and Commerce

U.S. House of Representatives

Witness Disclosure Requirement - "Truth in Testimony"

Required by House Rule XI, Clause 2(g)

Your Name:		
1. Are you testifying on behalf of a Federal, State, or local Government entity?	Yes	No
2. Are you testifying on behalf of an entity that is not a Government entity?	Yes	No
3. Please list any Federal grants or contracts (including subgrants or subcontracts) that <u>you personally have received</u> on or after October 1, 2006:		
4. Other than yourself, please list which entity or entities you are representing:		
5. If your answer to the question in item 2 in this form is 'yes,' please list any offices or elected positions held or briefly describe your representational capacity with the entities disclosed in the question in item 4:		
6. If your answer to the question in item 2 is 'yes,' do any of the entities disclosed in item 4 have parent organizations, subsidiaries, or partnerships that you are not representing in your testimony?	Yes	No
7. If the answer to the question in item 2 is 'yes,' please list any Federal grants or contracts (including subgrants or subcontracts) that were received by the entities listed under the question in item 4 on or after October 1, 2006, that exceed 10 percent of the revenue of the entities in the year received, including the source and amount of each grant or contract to be listed:		

Signature: _____ Date: _____

INSTRUCTIONS FOR COMPLETING THE TRUTH-IN-TESTIMONY DISCLOSURE FORM

1. ***In General.*** The form on the reverse side of the page is intended to assist witnesses appearing before the Committee on Energy and Commerce in complying with rule XI, clause 2(g)(4) of the Rules of the House of Representatives. The rule requires that:

In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of any Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness.

Please complete the form in accordance with these directions.

2. ***Name.*** Please provide the name of the witness in the box at the top of the form.
3. ***Governmental Entity (Item 1 on the form).*** Please check the box indicating whether or not the witness is testifying on behalf of a government entity, such as a Federal department or agency, or a State or local department, agency, or jurisdiction. Trade or professional associations of public officials are not considered to be governmental organizations.
4. ***Nongovernmental Entity (Item 2).*** Please check the box indicating whether or not the witness is testifying on behalf of an entity that is not a governmental entity.
5. ***Grants and Contracts (Item 3).*** Please list any Federal grants or contracts (including subgrants or subcontracts) that the witness personally has received from the Federal Government on or after October 1, 2006.
6. ***Entity(ies) to be Represented (Item 4).*** Please list all entities on whose behalf the witness is testifying.
7. ***Representational Capacity (Item 5).*** If the answer to the question in item 2 is 'yes,' please characterize the capacity in which the witness is testifying on behalf of the entities listed in item 4.
8. ***Affiliated Entities (Item 6).*** Please indicate whether the entity on whose behalf the witness is testifying has parent organizations, subsidiaries, or partnerships that are not represented by the testimony of the witness.
9. ***Grants and Contracts (Item 7).*** Please disclose grants and contracts as directed in item 7.
10. ***Submission.*** Please sign and date the form in the appropriate place. Please submit this form with your written testimony. Please note that under the Committee's rules, 150 copies of a written statement of your proposed testimony must be submitted at least two working days before the commencement of the hearing. Please also provide a copy in electronic format, as described in the letter of invitation.

AL-09-000-7603

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

May 14, 2009

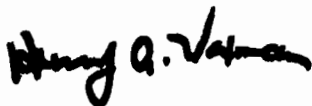
The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington DC, 20460

Dear Administrator Jackson:

Passage of comprehensive clean energy legislation is one of the top priorities of the Committee on Energy and Commerce. We plan to report a bill from committee prior to the Memorial Day recess. This legislation will reflect the Committee's work product and may differ significantly from the discussion draft circulated in March. To facilitate Congressional consideration of the legislation, we are requesting additional technical assistance and modeling results from the Environmental Protection Agency (EPA). EPA's analysis of the committee passed legislation will prove useful to us and other members of the House as we move forward.

We ask that EPA begin this process by meeting with our committee staff in advance of committee passage. Please call Alexandra Teitz, Lorie Schmidt or Joel Beauvais at (202) 225-4407.

Sincerely,



Henry A. Waxman
Chairman



Edward J. Markey
Chairman
Subcommittee on Energy and
Environment

AL-07000-6031

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641
April 17, 2009

The Honorable Lisa P. Jackson
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, DC 20460

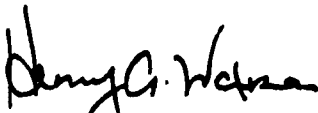
Dear Administrator Jackson:


I am writing to request your testimony at a hearing before the Committee on Energy and Commerce and the Subcommittee on Energy and Environment on Wednesday, April 22, at 9:30 a.m. in Room 2123 of the Rayburn House Office Building.

The hearing is entitled, "Legislative Hearing Regarding the American Clean Energy and Security Act." You have been asked to provide the views of the Environmental Protection Agency and the Obama Administration regarding the legislation.

An attachment to this letter provides additional information about testifying before the Committee. If you have any questions, please contact Joel Beauvais or Ben Hengst at (202) 225-4407.

Sincerely,


Henry A. Waxman
Chairman


Edward J. Markey
Chairman
Subcommittee on Energy and Environment

Enclosure

cc: Henry A. Waxman
Chairman

Joe Barton
Ranking Member

Fred Upton
Ranking Member
Energy and Environment

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOHN D. DINGELL, MICHIGAN
CLAIRMAN EMERITUS
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOULDER, VIRGINIA
FRANK PALLONE, JR., NEW JERSEY
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
ANNA G. ESHOU, CALIFORNIA
BART STUPAK, MICHIGAN
ELIOT L. ENGEL, NEW YORK
GENE GREEN, TEXAS
DIANA DEGETTE, COLORADO
VICE CHAIRMAN

LUIS CAPPES, CALIFORNIA
MIKE DOYLE, PENNSYLVANIA
JANE HARMAN, CALIFORNIA
JAN SCHAKOWSKY, ILLINOIS
CHARLES A. GONZALEZ, TEXAS
JAY INSLEE, WASHINGTON
TAMMY BALDWIN, WISCONSIN
MIKE ROSS, ARKANSAS
ANTHONY D. WEINER, NEW YORK
JIM MATHESON, UTAH
G. K. BUTTERFIELD, NORTH CAROLINA
CHARLIE MELANCON, LOUISIANA
JOHN BARROW, GEORGIA
BARRY P. LILL, INDIANA
DORIS O. MATSUI, CALIFORNIA
DUNNA CHRISTENSEN, VIRGIN ISLANDS
KATHY CASTOR, FLORIDA
JOHN SARBANES, MARYLAND
CHRISTOPHER MURPHY, CONNECTICUT
ZACHARY T. SPACE, OHIO
JERRY M. NERNEY, CALIFORNIA
BETTY SUTTON, OHIO
BRUCE BRALEY, IOWA
PETER WELCH, VERMONT

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

MAJORITY (202) 225-2927
FACSIMILE (202) 225-2945
MINORITY (202) 225-3641

energycommerce.house.gov

JOE BARTON, TEXAS
RANKING MEMBER

RALPH M. HALL, TEXAS
FRED UPTON, MICHIGAN
CLIFF STEARNS, FLORIDA
NATHAN DEAL, GEORGIA
ED WHITFIELD, KENTUCKY
JOHN SHIMKUS, ILLINOIS
JOHN W. SHADEGG, ARIZONA
RUDY BLUNT, MISSOURI
STEVE BUYER, INDIANA
GEORGE RADANOVICH, CALIFORNIA
JOSEPH R. PITTS, PENNSYLVANIA
MARY BONO MACK, CALIFORNIA
GREG WALDEN, OREGON
LEE TERRY, NEBRASKA
MIKE ROGERS, MICHIGAN
SUE WILKINS MYRICK, NORTH CAROLINA
JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA
MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE
PHIL GINGREY, GEORGIA
STEVE SCALISE, LOUISIANA

Witness Information Sheet

The following is a summary of some of the pertinent rules and procedures applicable to witnesses testifying before the Committee on Energy and Commerce:

- Witnesses should provide 150 copies of their written testimony (75 copies for subcommittee hearings) to Earley Green, Chief Clerk, in Room 2125 of the Rayburn House Office Building no later than 10:00 a.m. two business days prior to the hearing. Witnesses should also provide statements by this date in electronic format, either as a CD or via email in .pdf format to earley.green@mail.house.gov.
- At the hearing, each witness will be asked to summarize his or her written testimony in five minutes or less in order to maximize the time available for discussion and questions.
- House Rule XI clause 2(g)(4) requires that witnesses appearing in a nongovernmental capacity submit to the Committee in advance of the hearing "a curriculum vitae and a disclosure of the amount and source (by agency and program) of *each* Federal grant (or subgrant thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness." The attached form and instructions are intended to assist witnesses in complying with this requirement.
- Witnesses with disabilities should contact Committee staff to arrange any necessary accommodations.
- The jurisdiction of the Committee on Energy and Commerce is set forth in House Rule X clauses 1(f), 2, 3(e), and 4(e).
- The Committee rules governing this hearing are online at <http://energycommerce.house.gov/>.

For inquiries regarding these rules and procedures, please contact the Committee on Energy and Commerce at (202) 225-2927.

Committee on Energy and Commerce
U.S. House of Representatives
 Witness Disclosure Requirement - "Truth in Testimony"
 Required by House Rule XI, Clause 2(g)

Your Name: _____		
1. Are you testifying on behalf of a Federal, State, or local Government entity?	Yes	No
2. Are you testifying on behalf of an entity that is not a Government entity?	Yes	No
3. Please list any Federal grants or contracts (including subgrants or subcontracts) that <u>you personally have received</u> on or after October 1, 2006:		
4. Other than yourself, please list which entity or entities you are representing:		
5. If your answer to the question in item 2 in this form is 'yes,' please list any offices or elected positions held or briefly describe your representational capacity with the entities disclosed in the question in item 4:		
6. If your answer to the question in item 2 is 'yes,' do any of the entities disclosed in item 4 have parent organizations, subsidiaries, or partnerships that you are not representing in your testimony?	Yes	No
7. If the answer to the question in item 2 is 'yes,' please list any Federal grants or contracts (including subgrants or subcontracts) that were received by the entities listed under the question in item 4 on or after October 1, 2006, that exceed 10 percent of the revenue of the entities in the year received, including the source and amount of each grant or contract to be listed:		

Signature: _____ Date: _____

INSTRUCTIONS FOR COMPLETING THE TRUTH-IN-TESTIMONY DISCLOSURE FORM

1. ***In General.*** The form on the reverse side of the page is intended to assist witnesses appearing before the Committee on Energy and Commerce in complying with rule XI, clause 2(g)(4) of the Rules of the House of Representatives. The rule requires that:

In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of any Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness.

Please complete the form in accordance with these directions.

2. ***Name.*** Please provide the name of the witness in the box at the top of the form.
3. ***Governmental Entity (Item 1 on the form).*** Please check the box indicating whether or not the witness is testifying on behalf of a government entity, such as a Federal department or agency, or a State or local department, agency, or jurisdiction. Trade or professional associations of public officials are not considered to be governmental organizations.
4. ***Nongovernmental Entity (Item 2).*** Please check the box indicating whether or not the witness is testifying on behalf of an entity that is not a governmental entity.
5. ***Grants and Contracts (Item 3).*** Please list any Federal grants or contracts (including subgrants or subcontracts) that the witness personally has received from the Federal Government on or after October 1, 2006.
6. ***Entity(ies) to be Represented (Item 4).*** Please list all entities on whose behalf the witness is testifying.
7. ***Representational Capacity (Item 5).*** If the answer to the question in item 2 is 'yes,' please characterize the capacity in which the witness is testifying on behalf of the entities listed in item 4.
8. ***Affiliated Entities (Item 6).*** Please indicate whether the entity on whose behalf the witness is testifying has parent organizations, subsidiaries, or partnerships that are not represented by the testimony of the witness.
9. ***Grants and Contracts (Item 7).*** Please disclose grants and contracts as directed in item 7.
10. ***Submission.*** Please sign and date the form in the appropriate place. Please submit this form with your written testimony. Please note that under the Committee's rules, 150 copies of a written statement of your proposed testimony must be submitted at least two working days before the commencement of the hearing. Please also provide a copy in electronic format, as described in the letter of invitation.

EDWARD J. MARKEY, MASSACHUSETTS
CHAIRMAN
EARL BLUMENAUER, OREGON
JAY INSLEE, WASHINGTON
JOHN B. LARSON, CONNECTICUT
HILDA L. SOLIS, CALIFORNIA
STEPHANIE HERSETH SANDLIN, SOUTH DAKOTA
EMANUEL CLEAVER, MISSOURI
JOHN J. HALL, NEW YORK
JERRY MCNERNEY, CALIFORNIA



F. JAMES SENSENBRENNER, JR., WISCONSIN
RANKING MEMBER
JOHN B. SHADEGG, ARIZONA
GREG WALDEN, OREGON
CANDICE S. MILLER, MICHIGAN
JOHN SULLIVAN, OKLAHOMA
MARSHA BLACKBURN, TENNESSEE

Select Committee on
Energy Independence and Global Warming
U.S. House of Representatives

May 16, 2007

Administrator Stephen L. Johnson
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Johnson:

In light of recent developments concerning your authority to regulate carbon dioxide and the urgent need to do so, I am writing to invite you to testify before Select Committee on Energy Independence and Global Warming on Thursday, May 24 at 2:00 p.m. in a room TBD. The Select Committee would like to hear your views on *Massachusetts v. U.S. EPA* and the President's May 14 Executive Order: Cooperation Among Agencies in Protecting the Environment with Respect to Greenhouse Gas Emissions From Motor Vehicles, Nonroad Vehicles, and Nonroad Engines.

I look forward to your testimony on this important matter. Thank you very much.

Sincerely,

Edward J. Markey, Chairman
Select Committee on Energy Independence
& Global Warming

EDWARD J. MARKEY, MASSACHUSETTS
CHAIRMAN
EARL BLUMENAUER, OREGON
JAY INBEE, WASHINGTON
JOHN B. LARSON, CONNECTICUT
HILDA L. SOLIS, CALIFORNIA
STEPHANIE HERSETH SANDLIN, SOUTH DAKOTA
EMANUEL CLEAVER, MISSOURI
JOHN J. HALL, NEW YORK
JERRY MCNERNEY, CALIFORNIA



F. JAMES SENSENBRENNER, JR., WISCONSIN
RANKING MEMBER
JOHN B. SHADEGG, ARIZONA
GREG WALDEN, OREGON
CANDICE S. MILLER, MICHIGAN
JOHN SULLIVAN, OKLAHOMA
MARSHA BLACKBURN, TENNESSEE

Select Committee on
Energy Independence and Global Warming
U.S. House of Representatives

Fax

To: EPA Administrator Stephen Johnson

From: Edward J. Markey, Chairman

Select Committee on Energy

Independence and Global Warming

Fax: 202-501-1519

Pages: 2

Re: Invitation

Date: 5/17/2007

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

● **Comments:**

Attached please find an invitation to testify before the Select Committee on Energy Independence and Global Warming. Please direct your answer and any questions or concerns to my Senior Policy Advisor, Ana Unruh Cohen.

I look forward to your testimony.

Edward J. Markey, Chairman

Select Committee on Energy Independence

& Global Warming

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

October 25, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

The House Committee on Energy and Commerce Democrats have been investigating the practice of hydraulic fracturing and its potential impact on drinking water and the environment. In January of this year, we wrote to you to share some of our initial findings regarding the use of diesel fuel in hydraulic fracturing fluids. We reported that oil and gas service companies had injected more than 32 million gallons of diesel fuel or hydraulic fracturing fluids containing diesel fuel in 19 states between 2005 and 2009. Today we are writing to update this information based on new documents provided to the Committee.

Two companies — Frac Tech and Weatherford — have informed the Committee that they inadvertently provided inaccurate data in response to the Committee's request for information on the type and volume of products used in hydraulic fracturing between 2005 and 2009. As a result of these errors, our original analysis on the use of diesel fuel in hydraulic fracturing underestimated the true extent of use by more than 500,000 gallons.

The companies' errors, described below, demonstrate the difficulty in obtaining accurate information about the contents of hydraulic fracturing fluids and reinforce the need for mandatory and uniform national disclosure of this information to EPA.

On August 22, 2011, Frac Tech informed the Committee that it used almost 2.4 million gallons of a product that contains at least 20% diesel fuel. Frac Tech previously had told the Committee that it did not use this product between 2005 and 2009. Counsel for the company explained that a discrepancy in the company's record-keeping had caused this problem. As a result, the Committee's original letter to you understated Frac Tech's use of products containing diesel fuel.

Use of Diesel Fuel in Hydraulic Fracturing

Our findings based on these new documents continue to raise serious concerns. Between 2005 and 2009, 12 of the 14 companies used 32.7 million gallons of diesel fuel or fluids containing diesel fuel.⁴ BJ Services used the most diesel fuel and fluids containing diesel, more than 11.5 million gallons, followed by Halliburton, which used 7.2 million gallons. Four other companies, RPC (4.3 million gallons), Sanjel (3.6 million gallons), Frac Tech (2.6 million gallons), and Key Energy Services (1.6 million gallons), used more than one million gallons of diesel fuel and fluids containing diesel.

These 12 companies injected these diesel-containing fluids in 20 states. Diesel-containing fluids were used most frequently in Texas, which accounted for more than half of the total volume injected, 16.7 million gallons. The companies injected at least one million gallons of diesel-containing fluids in Oklahoma (3.2 million gallons), North Dakota (3.1 million gallons), Wyoming (2.9 million gallons), Louisiana (2.9 million gallons), and Colorado (1.3 million gallons).

Diesel fuel was a significant component of the diesel-containing fluids these companies injected. The companies used 10.3 million gallons of straight diesel fuel and an additional 20 million gallons of products containing at least 30% diesel fuel.

Tables 1 and 2, which are attached to this letter, list the companies that reported using diesel-containing fluids and the states in which they injected them.

Conclusion

This new information indicates that the use of diesel fuel in hydraulic fracturing may be even higher than expected based on our original estimates. The companies' reporting errors also reinforce the need for mandatory and uniform national disclosure of the contents and use of hydraulic fracturing fluids.

We look forward to the completion of your hydraulic fracturing study and urge you to consider appropriate regulations, as well as permitting guidance, for hydraulic fracturing fluids that contain diesel fuels.

⁴ Calfrac Well Services and Universal Well Services did use any fracturing fluids containing diesel during this time period.

The Honorable Lisa Jackson

October 25, 2011

Page 5

Attachment

Table 1. Injection of Hydraulic Fracturing Fluids Containing Diesel Fuel: By Company (2005-2009)

Company	Volume (gallons)
Basic Energy Services	204,013
BJ Services	11,555,538
Complete	4,625
Frac Tech	2,558,790
Halliburton	7,207,216
Key Energy Services	1,641,213
RPC	4,314,110
Sanjel	3,641,270
Schlumberger	443,689
Superior	833,431
Trican	92,537
Weatherford	228,388
Total	32,724,820

Table 2. Injection of Hydraulic Fracturing Fluids Containing Diesel Fuel: By State (2005-2009)

State	Volume (gallons)	State	Volume (gallons)
AK	39,375	MT	662,946
AL	2,464	ND	3,138,950
AR	516,555	NM	574,979
CA	26,381	OK	3,208,391
CO	1,321,275	PA	32,783
FL	377	TX	16,703,762
KS	50,489	UT	330,084
KY	212	WV	8,754
LA	2,922,432	WY	2,955,560
MI	8,007		
MS	221,044	Total	32,724,820



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 07 2009

OFFICE OF
AIR AND RADIATION

The Honorable Edward J. Markey
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

On behalf of the U.S. Environmental Protection Agency (EPA), it is my pleasure to inform you that The Consensus Building Institute, located in Cambridge, Massachusetts, has received a 2008 Clean Air Excellence Award for their project, Greater Boston Breathes Better. From over 125 applications received, this project was chosen by EPA's Office of Air and Radiation for its impact, innovation, and replicability.

The Clean Air Excellence Awards Program annually recognizes and honors outstanding and innovative efforts to achieve cleaner air. The program was recommended to EPA by the Clean Air Act Advisory Committee, a committee that advises EPA on policy issues related to implementing the Clean Air Act.

Please accept this invitation to attend the 2008 Clean Air Excellence Awards Ceremony, which will be held at the Hamilton Crowne Plaza Hotel in Washington, D.C. on the evening of May 13, 2009. The EPA Administrator has been invited as the keynote speaker, and I will attend to present the awards. A reception to honor this year's winners will be held immediately following the awards ceremony.

Please join us in congratulating the winners in your state for their innovative projects that are helping to achieve cleaner air. I hope to see you at the ceremony. Please feel free to contact Pat Childers, of my office, if you have any questions or would like to accept the invitation. He can be reached at (202) 564-1082 or childers.pat@epa.gov to respond to any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Craig".

Elizabeth Craig
Acting Assistant Administrator

EDWARD J. MARKEY, MASSACHUSETTS
 CHAIRMAN
 EARL BLUMENAUER, OREGON
 JAY INSLEE, WASHINGTON
 JOHN B. LARSON, CONNECTICUT
 HILDA L. SOLIS, CALIFORNIA
 STEPHANIE HERSETH SANDLIN, SOUTH DAKOTA
 EMANUEL CLEAVER, MISSOURI
 JOHN J. HALL, NEW YORK
 JERRY MCNERNEY, CALIFORNIA



F. JAMES SENSENBRENNER, JR., WISCONSIN
 RANKING MEMBER
 JOHN B. SHADEGG, ARIZONA
 GREG WALDEN, OREGON
 CANDICE S. MILLER, MICHIGAN
 JOHN SULLIVAN, OKLAHOMA
 MARSHA BLACKBURN, TENNESSEE

**Select Committee on
 Energy Independence and Global Warming
 U.S. House of Representatives**

March 19, 2008

Robert J. Meyers
 Environmental Protection Agency
 Principal Deputy Assistant Administrator
 Office of Air and Radiation
 United States Environmental Protection Agency
 1200 Pennsylvania Avenue, NW
 Washington, DC 20460

Dear Mr. Meyers:

I am writing to invite you to testify at a hearing of the Select Committee on Energy Independence and Global Warming regarding aviation emissions and global warming. The hearing is scheduled to take place in the afternoon of April 2, 2008 at approximately 1pm.

As Congress examines all causes and impacts of heat-trapping emissions, the Select Committee is assessing aviation's contribution to greenhouse gasses, since in the U.S. aviation emissions account for 12 percent of transportation carbon dioxide emissions and three percent of total U.S. CO2 emissions. Aviation emissions can be reduced through new technology, more efficient ground and air operations, and fuel. Virgin Atlantic's recent demonstration flight using biofuel from sustainable sources provides an exciting glimpse at the future of aviation fuels, and the Committee would like the opportunity to explore with you the prospect of jet biofuel. The Committee also would like you to discuss the landing and takeoff operations Virgin Atlantic has undertaken to further reduce emissions.

In the course of your testimony, the Select Committee invites you to address the following questions:

1. Does EPA support regulating the emissions of greenhouse gasses from aircraft?
2. Is the EPA coordinating with the FAA on the future of aviation emissions regulations? If so, how?
3. What is the status of EPA's response to the petition from U.S. states, cities and environmental organizations to regulate greenhouse gas emissions from domestic and foreign aircraft departing or landing at American airports?
4. Is EPA examining how the U.S. might comply with the European Union Emissions Trading Scheme or a domestic cap and trade system that would include aviation emissions or fuel?


You will be asked to make an initial oral presentation of up to 5 minutes summarizing your written testimony, followed by a period of questioning from the Members of the Committee. The Committee Rules require that witnesses provide written testimony at least two working days in advance of the hearing, and I ask that you to make every effort to meet that deadline.

To facilitate this process, please submit your testimony in electronic format (in Word or Wordperfect format, to Aliya.brodsky@mail.house.gov), so that it can be forwarded to Committee Members on a timely basis. The Committee will also make hard-copy duplicates as necessary.

Following your appearance before the Select Committee, members of the committee may submit additional questions to you to answer for the hearing record. We ask that you please respond to these questions as soon as possible, or within two weeks.

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Markey", with a long horizontal flourish extending to the right.

Edward J. Markey
Chairman

PETER WELCH
AT-LARGE, VERMONT

COMMITTEE ON RULES

COMMITTEE ON
OVERSIGHT AND GOVERNMENT
REFORM

Congress of the United States
House of Representatives
Washington, DC 20515-4501

1404 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4501
202-225-4115

DISTRICT
30 MAIN STREET
3RD FLOOR, SUITE 350
BURLINGTON, VT 05401
(802) 652-2450
(888) 605-7270

September 20, 2007

The Honorable Stephen Johnson
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Johnson:

In light of last week's ruling by United States District Court Judge William Sessions, we write to urge your immediate approval of California's Clean Air Act waiver related to tail pipe emissions.

As you know, this waiver of preemption under the Clean Air Act would allow California to aggressively regulate global warming pollution from automobiles. Many states have passed legislation that would impose identical reductions of greenhouse gases and are awaiting the Environmental Protection Agency's (EPA's) decision regarding California's waiver before they can proceed. States that have already taken such action include: Vermont, Oregon, Washington, Connecticut, Maine, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island. Other states are also carefully considering the adoption of California's emissions requirements, including Illinois, Arizona, North Carolina, Colorado, New Mexico and New Hampshire.

On September 12, 2007, United States District Court Judge William K. Sessions effectively upheld California's landmark global warming tailpipe standards. Judge Sessions ruled that the automotive companies who brought the suit, "have not carried their burden to show that compliance with the regulation is not feasible; nor have they demonstrated that it will limit consumer choice, create economic hardship for the automobile industry, cause significant job loss, or undermine safety." The Court also found that the federal fuel economy law does not block California and other states from adopting laws under the Clean Air Act to cut global warming pollution from vehicles. Further, the Court clearly rejected the automotive manufacturers' claims that the standards would hurt consumers or are technically infeasible.

Your approval of this waiver would be consistent with the intent of the April 2, 2007 decision by the United States Supreme Court in *Massachusetts v. EPA*. There the Court held that greenhouse gases are air pollutants and therefore are subject to EPA regulation.

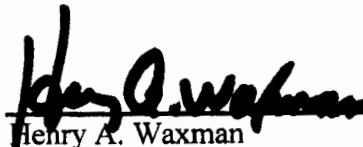
This decision, as well as Judge Session's decision, should guide the EPA as it completes the review of the California waiver.

There is a growing consensus among the states that immediate action is necessary to reduce the imminent hazards of America's global warming pollution. We urge you to make your decision on the merits, in accordance with the law and the facts of this case, which demand you immediately grant California's waiver, allowing California and other States to move forward---ideally in partnership with the federal government.

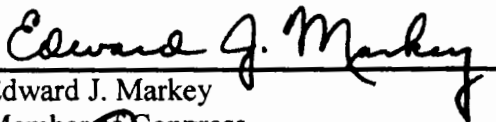
Sincerely,



Peter Welch
Member of Congress



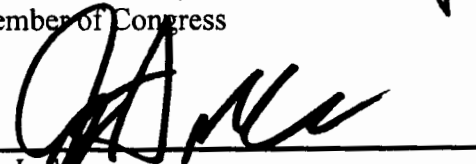
Henry A. Waxman
Member of Congress



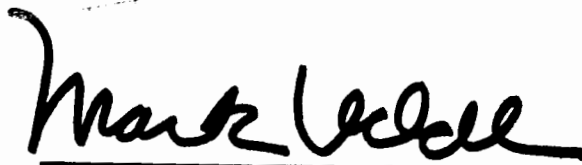
Edward J. Markey
Member of Congress



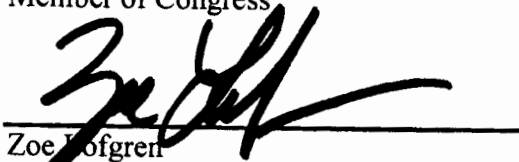
Kathy Castor
Member of Congress



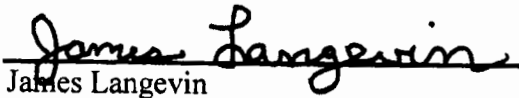
Jay Inslee
Member of Congress



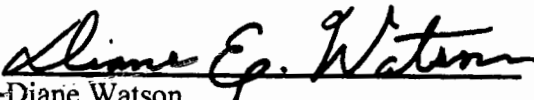
Mark Udall
Member of Congress



Zoe Lofgren
Member of Congress



James Langevin
Member of Congress



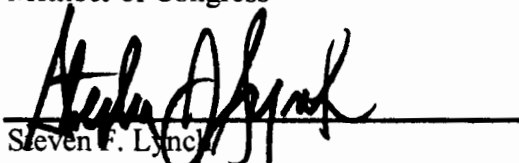
Diane Watson
Member of Congress



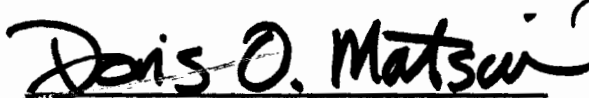
Anna Eshoo
Member of Congress



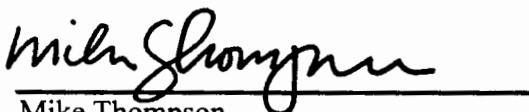
Joe Courtney
Member of Congress



Steven F. Lynch
Member of Congress



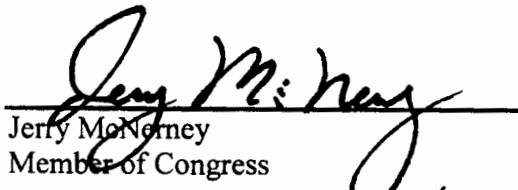
Doris Matsui
Member of Congress



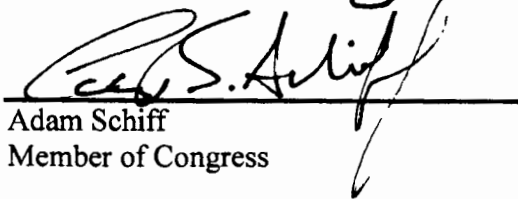
Mike Thompson
Member of Congress



Pete Stark
Member of Congress



Jerry McNerney
Member of Congress



Adam Schiff
Member of Congress



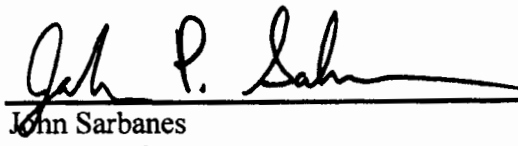
Michael Arcuri
Member of Congress



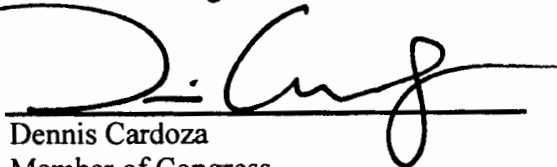
Patrick J. Kennedy
Member of Congress



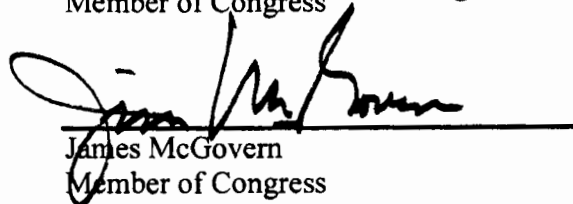
Ed Perlmutter
Member of Congress



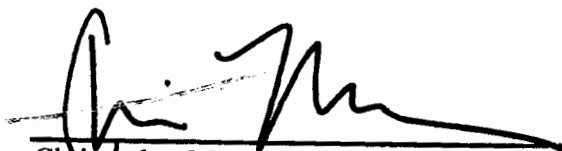
John Sarbanes
Member of Congress




Dennis Cardoza
Member of Congress



James McGovern
Member of Congress




Christopher Murphy
Member of Congress



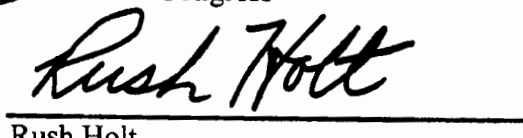
Xavier Becerra
Member of Congress



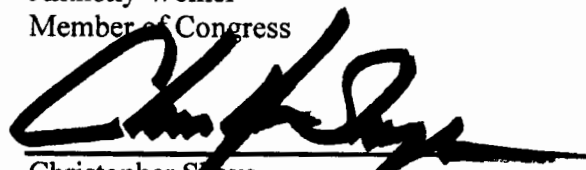
Paul Hodes
Member of Congress



Anthony Weiner
Member of Congress




Rush Holt
Member of Congress



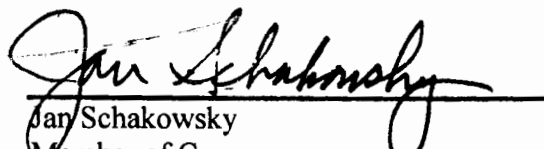
Christopher Shays
Member of Congress



Albio Sires
Member of Congress



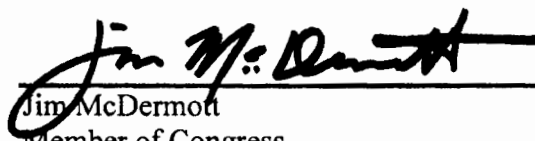
Thomas Allen
Member of Congress



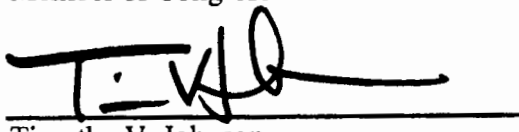
Jay Schakowsky
Member of Congress



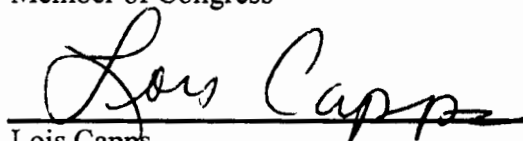
Keith Ellison
Member of Congress



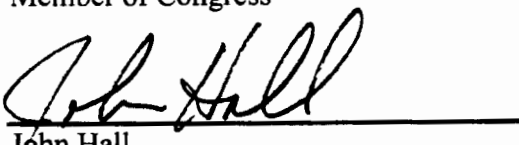
Jim McDermott
Member of Congress



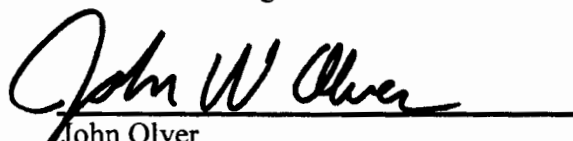
Timothy V. Johnson
Member of Congress



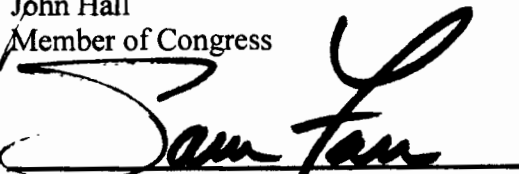
Lois Capps
Member of Congress




John Hall
Member of Congress



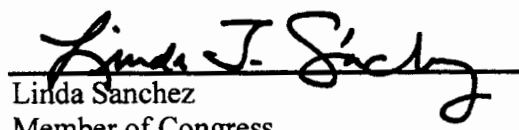
John Olver
Member of Congress




Sam Farr
Member of Congress

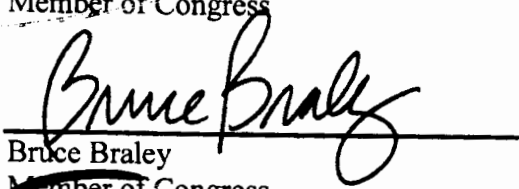


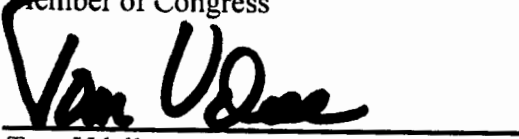
Phil Hare
Member of Congress

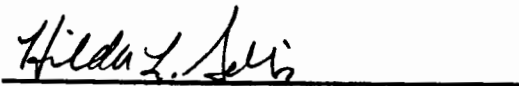


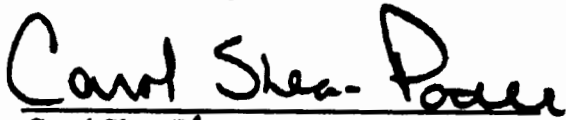
Linda J. Sanchez
Member of Congress

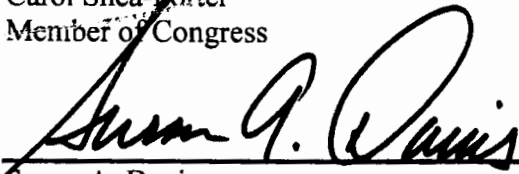

Gwen Moore
Member of Congress

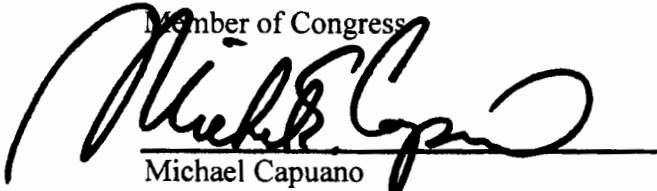

Bruce Braley
Member of Congress

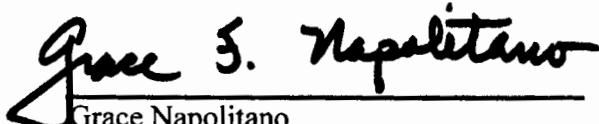

Tom Udall
Member of Congress

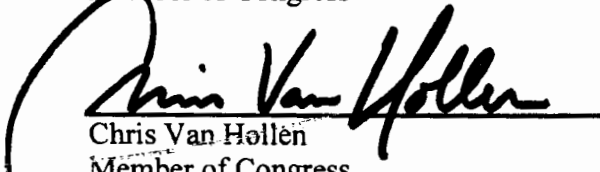

Hilda Solis
Member of Congress



Carol Shea-Porter
Member of Congress

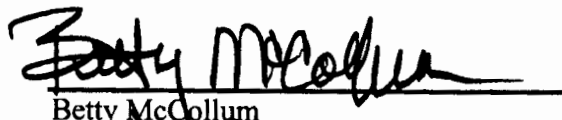

Susan A. Davis
Member of Congress



Michael Capuano
Member of Congress



Grace Napolitano
Member of Congress

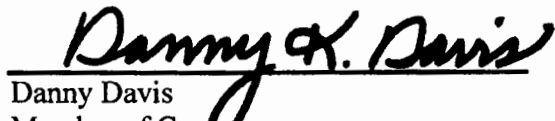

Chris Van Hollen
Member of Congress

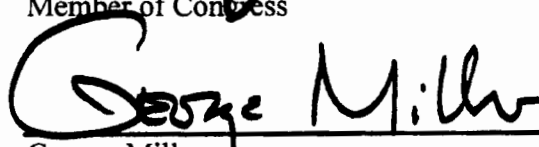

Michael Honda
Member of Congress

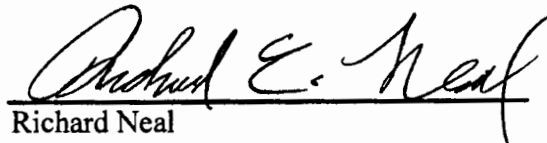

Betty McCollum
Member of Congress



Michael Michaud
Member of Congress



Peter DeFazio
Member of Congress

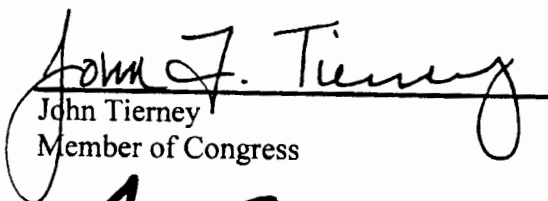

Danny Davis
Member of Congress

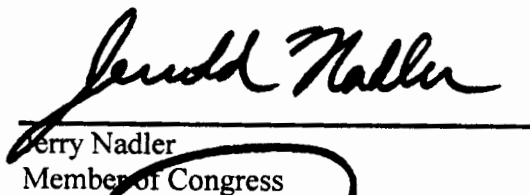

George Miller
Member of Congress


Richard Neal
Member of Congress

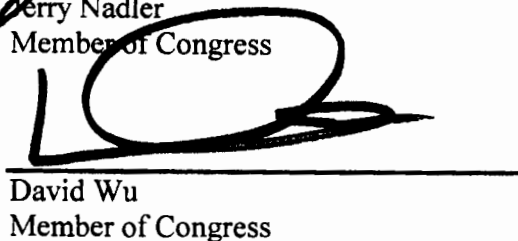

Donald M. Payne
Member of Congress



Howard Berman
Member of Congress


John Tierney
Member of Congress

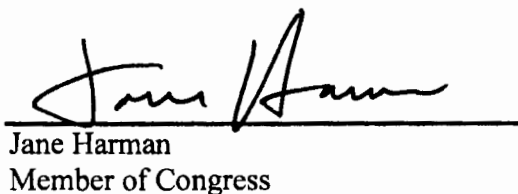

Jerry Nadler
Member of Congress

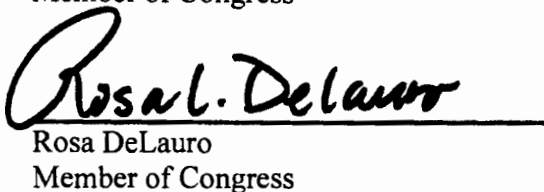

Jim Moran
Member of Congress

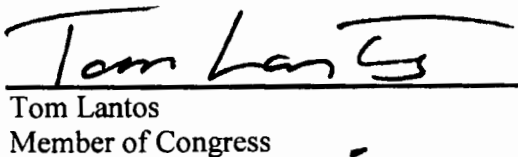

David Wu
Member of Congress

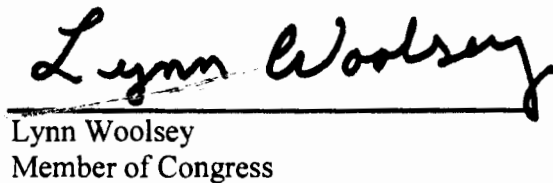

Brad Sherman
Member of Congress

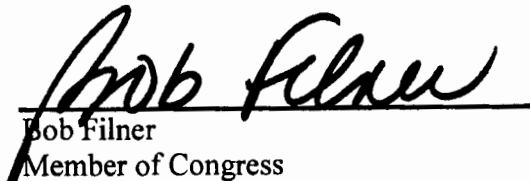

Barney Frank
Member of Congress

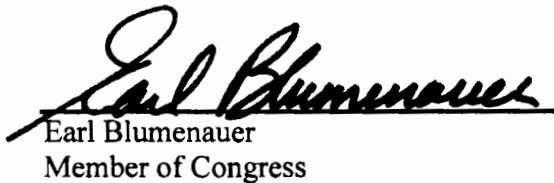

Jane Harman
Member of Congress

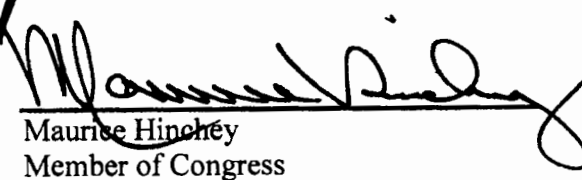

Rosa DeLauro
Member of Congress


Tom Lantos
Member of Congress

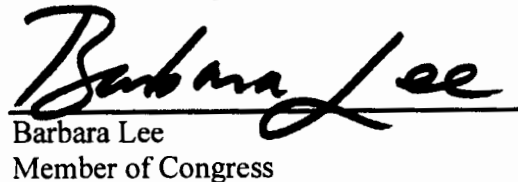

Lynn Woolsey
Member of Congress

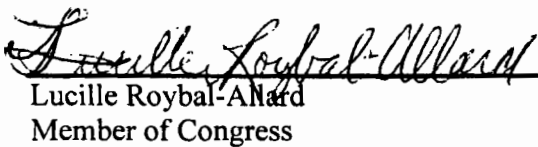

Bob Filner
Member of Congress

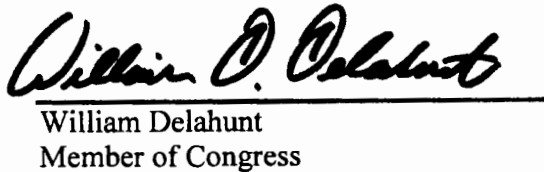

Earl Blumenauer
Member of Congress

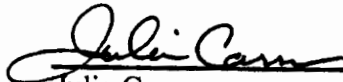

Maurice Hinchey
Member of Congress


Marlon Berry
Member of Congress

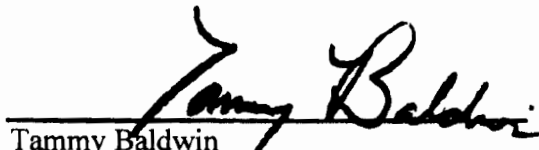

Barbara Lee
Member of Congress


Lucille Roybal-Allard
Member of Congress

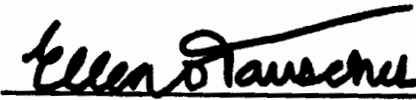

William Delahunt
Member of Congress



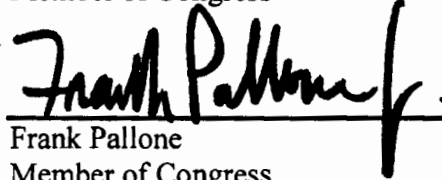
Julia Carson
Member of Congress



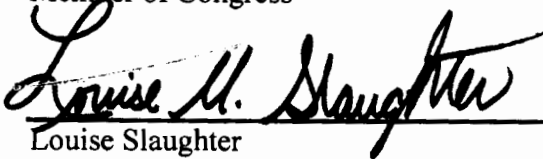
Tammy Baldwin
Member of Congress



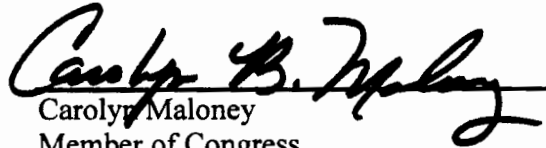
Ellen O. Tauscher
Member of Congress



Frank Pallone
Member of Congress



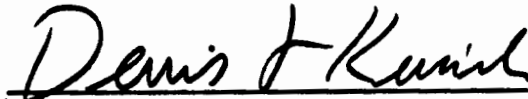
Louise Slaughter
Member of Congress



Carolyn Maloney
Member of Congress



Eleanor Holmes Norton
Member of Congress



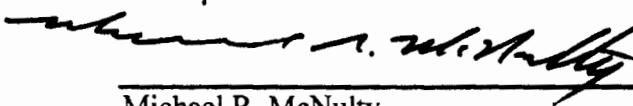
Dennis Kucinich
Member of Congress



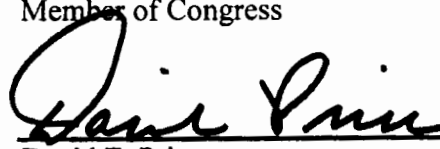
Albert Wynn
Member of Congress



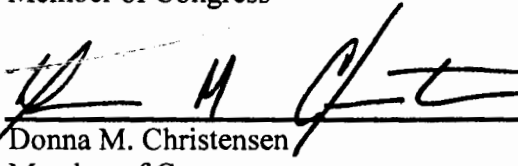
Brad Miller
Member of Congress



Michael R. McNulty
Member of Congress



David E. Price
Member of Congress



Donna M. Christensen
Member of Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 7 2007

OFFICE OF
AIR AND RADIATION

The Honorable Edward J. Markey
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter dated September 20, 2007, co-signed by 87 of your colleagues, regarding motor vehicle emissions standards for greenhouse gases adopted by California and subsequently adopted by 11 other states. In light of a recent U.S. District Court decision in Vermont, you have urged the United States Environmental Protection Agency (EPA) to immediately grant California's waiver request for its greenhouse gas emission standards.

As noted in your letter, EPA must reach its waiver decision based on the applicable law and facts. The Vermont court decision and other information received after the close of the public comment period have been included in the public docket for the waiver proceeding. Recognizing the importance of this matter, Administrator Stephen Johnson announced his intention to issue a waiver decision by the end of this year. EPA will make every effort, to the extent practicable, to consider all docket materials in reaching its final decision.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Josh Lewis, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-2095.

Sincerely,

Robert J. Meyers
Principal Deputy Assistant Administrator

EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS

ENERGY AND COMMERCE COMMITTEE

RANKING MEMBER
SUBCOMMITTEE ON
TELECOMMUNICATIONS AND
THE INTERNET

SELECT COMMITTEE ON
HOMELAND SECURITY

RESOURCES COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515-2107

November 21, 2005

2108 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2107
(202) 225-2836

DISTRICT OFFICES:

5 HIGH STREET, SUITE 101
MEDFORD, MA 02155
(781) 396-2900

188 CONCORD STREET, SUITE 102
FRAMINGHAM, MA 01702
(508) 875-2900
www.house.gov/markey

Mr. Stephen L. Johnson, Administrator
Environmental Protection Agency Docket Center
Air and Radiation Docket
Environmental Protection Agency
EPA West
Mail Code 6102T
1200 Pennsylvania Avenue, NW
Washington DC 20460
Attention Docket ID No. OAR-2005-0083

Dear Mr. Johnson,

I am writing to express my concerns regarding the Environmental Protection Agency's (EPA) draft Public Health and Environmental Radiation Protection Standards for Yucca Mountain, Nevada. The revised standards were issued in response to the U.S. Court of Appeals for the District of Columbia Circuit ruling that the time frame for regulatory compliance was not based upon and consistent with the findings and recommendations of the National Academy of Sciences 1995 report entitled "Technical Bases for Yucca Mountain Standards."¹ As a result of this ruling, the EPA's 10,000 year compliance period and the Nuclear Regulatory Commission's licensing rule that implemented the 10,000 year compliance period were voided.

According to section 801(a) of the Energy Policy Act of 1992, the Yucca Mountain site can only receive a license from the Nuclear Regulatory Commission (NRC) if it is in compliance with the EPA public health and safety standards. The law directed EPA to promulgate standards "based upon and consistent with the findings and recommendations of the National Academy of Sciences" (NAS), in order to protect the public from releases of radioactive materials stored or disposed of in the proposed Yucca Mountain high level nuclear waste repository. The NAS has concluded that there is "no scientific basis for limiting the time period of the individual-risk standard to 10,000 years, or any other value."

As the NAS study points out, "the repository could release radionuclides over hundreds of thousands of years or more". Some radionuclides, such as technetium-99 (Tc-99), will likely take longer than 10,000 years to reach the biosphere. The EPA website on Tc-99 states that "as with any radioactive material, there is an increased chance that cancer or other adverse health effects can result from exposure" (to technetium-99)². In fact,

this same website, when referring to standards for Yucca Mountain, states that "Because of the large quantity of spent nuclear fuel and defense high-level waste, Tc-99 is one of the more important radionuclides considered. The standards limit the radiation exposure of individuals and concentrations in the ground water from the release of Tc-99 and other radionuclides in the vicinity of Yucca Mountain." Because it takes longer than 10,000 years for Tc-99 to reach the biosphere, this EPA website would suggest that the EPA standards should apply for a longer than 10,000 year period, as the NAS report has already established.

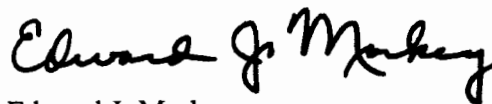
In light of the NAS findings and recommendations, I am concerned that the proposed rule fails to comply with the clear requirements of the law. In light of this, I respectfully request your assistance and cooperation in responding to the following questions regarding EPA's proposed rule:

- 1) Why do the proposed standards for the limit for Reasonably Maximum Exposed Individual (RMEI) change after 10,000 years? The NAS report specifically does "not recommend that a release limit be adopted", referring to the 10,000 year limit.
- 2) On what basis did EPA choose a 350 millirem per year RMEI between 10,000 and 1,000,000 years? This value is over 23 times greater than the standard for the first 10,000 years. In past recommendations regarding clean-ups at Superfund sites, the EPA has stated that any radiation dose above 15 to 25 millirems per year is inadequate to protect public health. Furthermore, the EPA has also stated that doses of 100 millirems per year produce unacceptable levels of risk. Why shouldn't the standards for Yucca Mountain be set at the same radiation protection levels that the EPA has previously established for protection of public health?
- 3) Why are natural background doses in some regions even mentioned in the guidelines? (page 49037 of the current standards) The RMEI from our waste is on-top-of background doses. Why would we want to increase radiation exposure beyond natural occurring levels, especially to a level (350 millirem per year) that is beyond acceptable levels of risk, according to previous EPA findings?
- 4) Why does the groundwater protection standard change to the overall standard after 10,000 years? The ruling by the U.S. Court of Appeals found that the time frame for regulatory compliance was not consistent with the NAS report. Doesn't the elimination of groundwater protection standards defy the ruling of the U.S. Court of Appeals? EPA did not revise any portion of the ground-water standards, so the Agency states that it will not accept comments on this aspect of the Standards. However, given the court ruling, I believe such an action is arbitrary and capricious and inconsistent with both the law and the clear direction of the court. Furthermore, with respect to the groundwater contamination, the NAS report state that, "peak risks might occur tens to hundreds of thousands of years or even farther into the future." Why, when the contamination will be most dangerous, are the standards weakened?

The current EPA proposed standards mention the National Academy of Public Administration (NAPA) 1997 report on "Deciding for the Future: Balancing Risks, Costs, and Benefits Fairly Across Generations". Included in the NAPA principles is "Every generation has obligations as trustee to protect the interests of future generations." It is our generation that created this waste. We are responsible for protecting future generations from any adverse affects of our nuclear waste. Given the life time of nuclear waste, I do not believe that EPA's proposed standards for radiation exposure after 10,000 years are appropriately protective of public health and the environment or consistent with the law.

I look forward to your response.

Sincerely,

A handwritten signature in black ink, reading "Edward J. Markey". The signature is fluid and cursive, with the first name "Edward" and last name "Markey" clearly distinguishable.

Edward J. Markey
Member of Congress

1. Technical Bases for Yucca Mountain Standards (the NAS Report), National Research Council, National Academy Press, 1995.
2. <http://www.epa.gov/radiation/radionuclides/technetium.htm>

CHARLES B. RANGEL
15TH CONGRESSIONAL DISTRICT
NEW YORK

COMMITTEE:
WAYS AND MEANS
JOINT COMMITTEE
ON TAXATION



GEORGE H. HENRY
CHIEF OF STAFF

Congress of the United States House of Representatives

The Honorable Lisa P. Jackson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

December 10, 2012

Dear Administrator Jackson:

We urge the Environmental Protection Agency (EPA) to take the necessary steps to protect our nation's most vulnerable by issuing the strongest particulate matter 2.5 (PM_{2.5}) standards supported by the science. Despite the progress made under the Clean Air Act, millions of Americans still breathe unhealthy air.

Research shows that air pollution harms some communities more than others. A 2011 report by the CDC highlights that Latinos, Blacks, Asians and Pacific Islanders are more likely to live in areas where air pollution fails to meet national standards. Studies repeatedly found lower income or education levels linked to increased risk of premature death from particulate matter.

The current, out-of-date standards fail to protect public health, especially the health of people with lung disease, heart disease, or diabetes, children and the elderly and low income Americans and communities of color who bear the greatest burden from air pollution.

The historically marginalized communities many of us represent stand to benefit the most if the EPA takes the following steps:

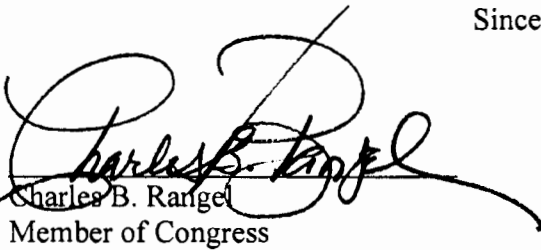
- Reduces the annual PM_{2.5} standard to 11 micrograms per cubic meter
- Reduces the 24-hr PM_{2.5} standard to 25 micrograms per cubic meter
- Requires an expanded network of PM monitors near major roadways

Because of the disproportionate impact of pollution on low-income communities of color, we encourage EPA to enact these safeguards to reduce the number of hospital admissions, emergency room visits and premature deaths related to cardiovascular and respiratory complications.

According to the American Lung Association and based on extensive scientific evidence, stronger particle pollution standards will protect vulnerable groups and prevent hundreds of thousands of illnesses and tens of thousands of premature deaths each year. Not only does this make good moral sense, it makes fiscal sense as well.

In the spirit of Executive Order 12898, we urge your Agency to stand with us and the communities and organizations we represent in support of strengthening both the annual and daily standards because everyone deserves a chance to breathe healthy air.

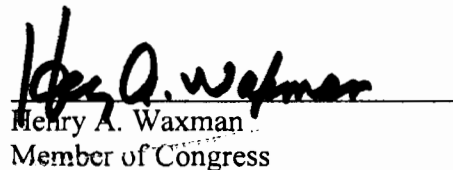
Sincerely,



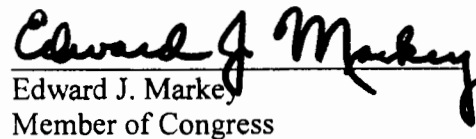
Charles B. Rangel
Member of Congress



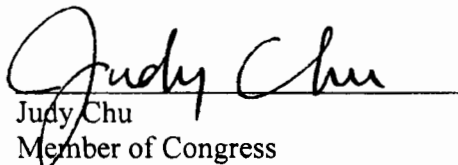
Raúl M. Grijalva
Member of Congress



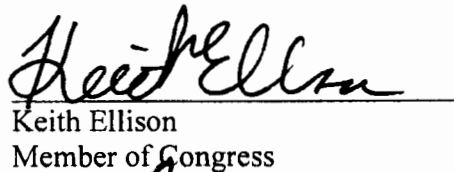
Henry A. Waxman
Member of Congress



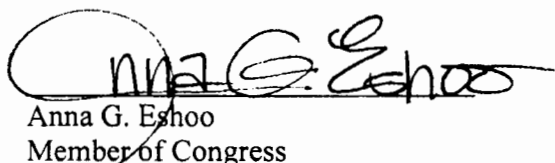
Edward J. Markey
Member of Congress



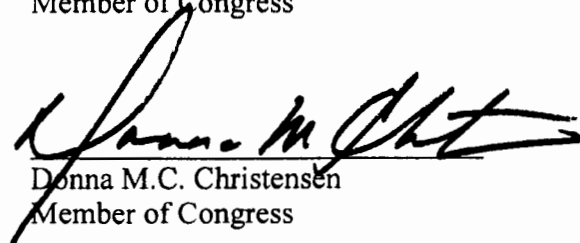
Judy Chu
Member of Congress



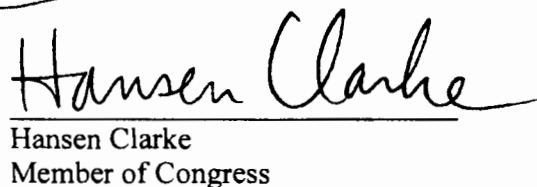
Keith Ellison
Member of Congress



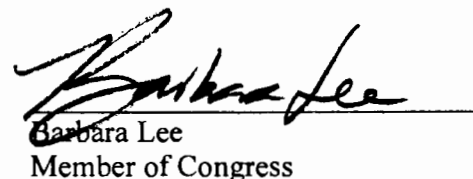
Anna G. Eshoo
Member of Congress



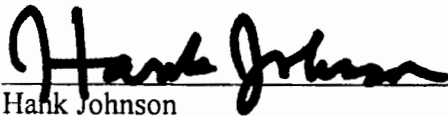
Donna M.C. Christensen
Member of Congress



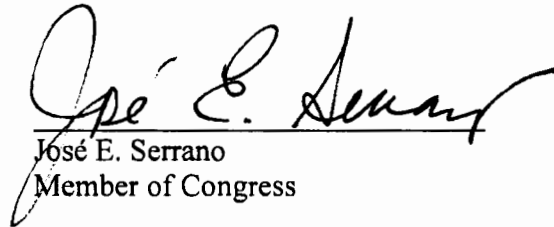
Hansen Clarke
Member of Congress



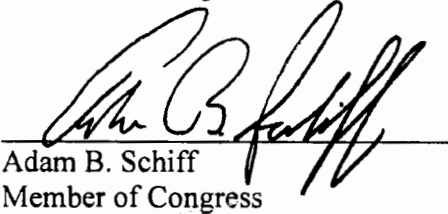
Barbara Lee
Member of Congress



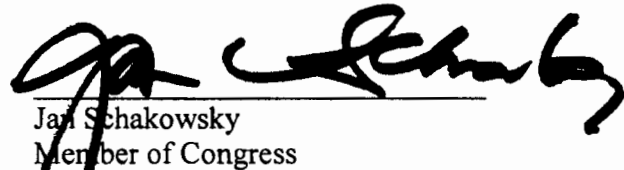
Hank Johnson
Member of Congress



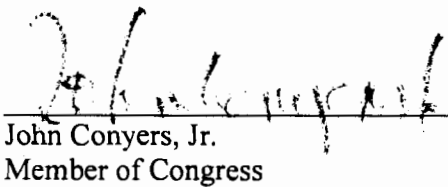
José E. Serrano
Member of Congress



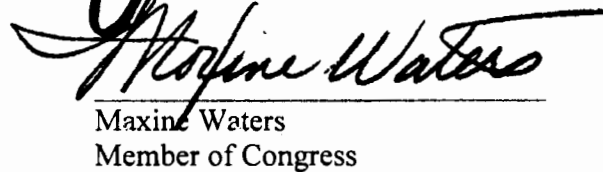
Adam B. Schiff
Member of Congress



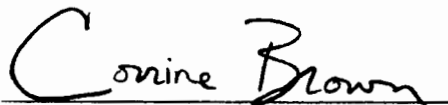
Jan Schakowsky
Member of Congress



John Conyers, Jr.
Member of Congress



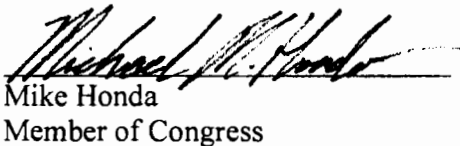
Maxine Waters
Member of Congress



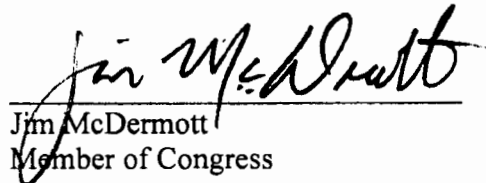
Corrine Brown
Member of Congress



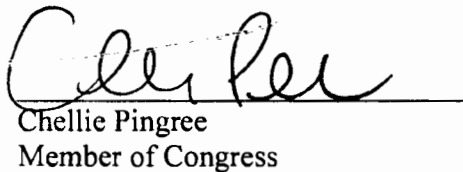
Luis V. Gutierrez
Member of Congress



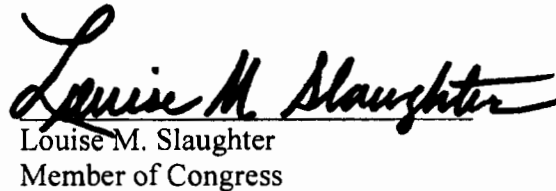
Mike Honda
Member of Congress



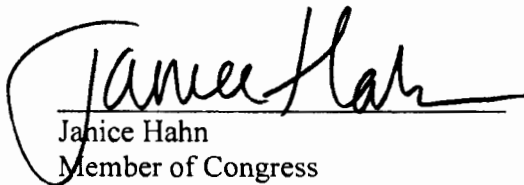
Jim McDermott
Member of Congress



Chellie Pingree
Member of Congress



Louise M. Slaughter
Member of Congress



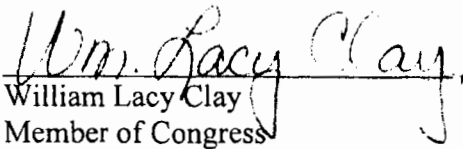
Janice Hahn
Member of Congress

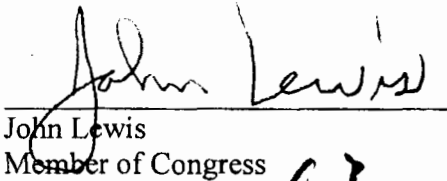


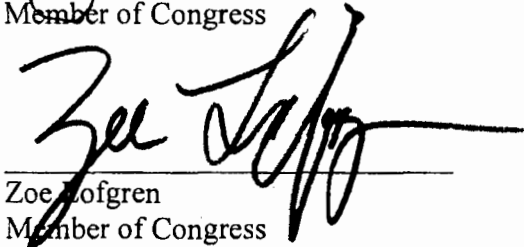
Dennis J. Kucinich
Member of Congress

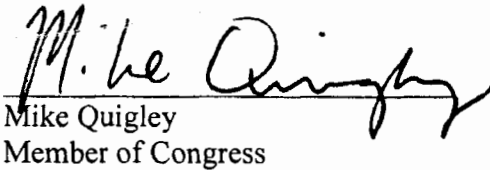
Handwritten signature or text, possibly "Handwritten" or "Handwritten".

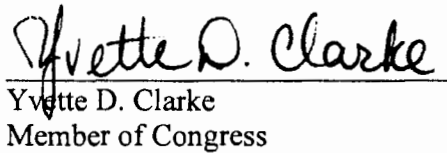
Handwritten signature or text, possibly "Handwritten" or "Handwritten".

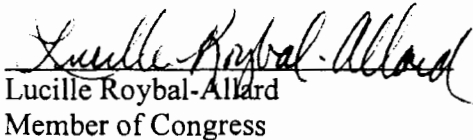

William Lacy Clay
Member of Congress

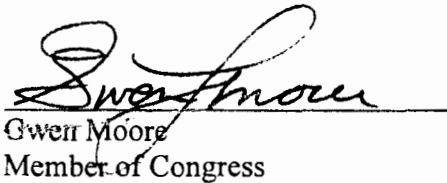

John Lewis
Member of Congress

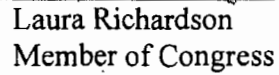

Zoe Lofgren
Member of Congress

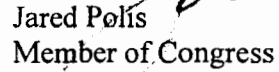

Mike Quigley
Member of Congress

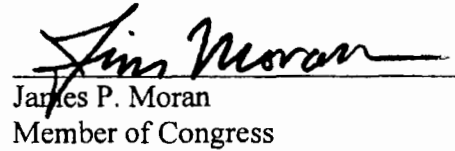

Yvette D. Clarke
Member of Congress

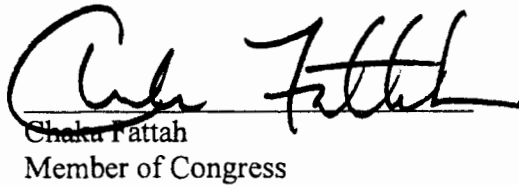

Lucille Roybal-Allard
Member of Congress

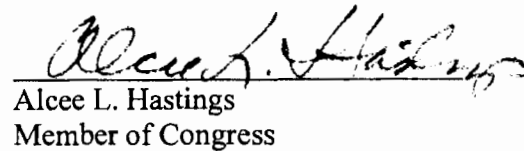

Gwen Moore
Member of Congress

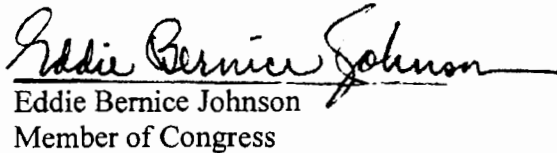

Laura Richardson
Member of Congress

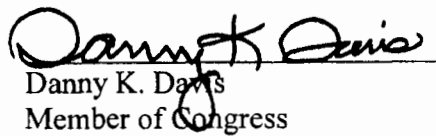

Jared Polis
Member of Congress

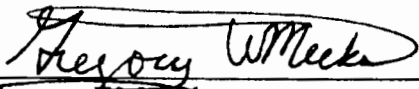

James P. Moran
Member of Congress


Chaka Fattah
Member of Congress


Alcee L. Hastings
Member of Congress


Eddie Bernice Johnson
Member of Congress

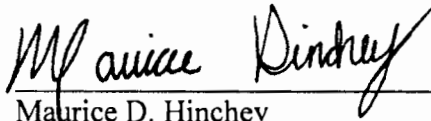

Danny K. Davis
Member of Congress



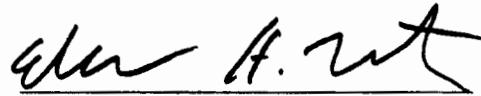
Gregory W. Meeks
Member of Congress



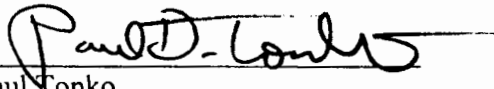
Jim Langevin
Member of Congress



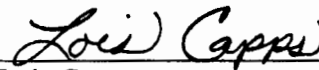
Maurice D. Hinchey
Member of Congress



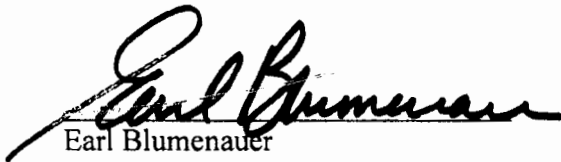
Eleanor Holmes Norton
Member of Congress



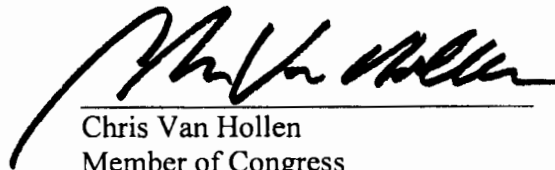
Paul Tonko
Member of Congress



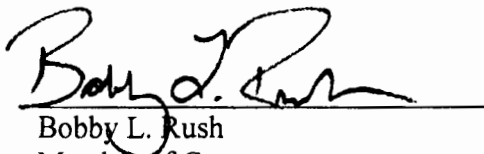
Lois Capps
Member of Congress



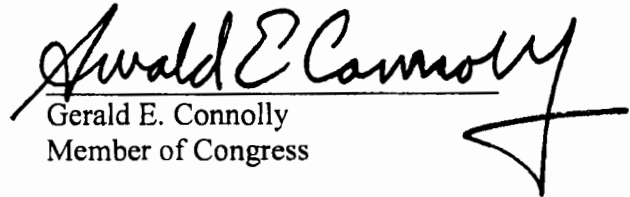
Earl Blumenauer
Member of Congress



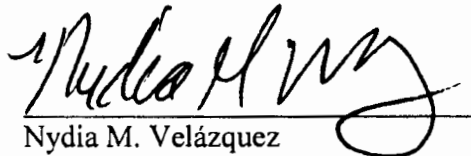
Chris Van Hollen
Member of Congress



Bobby L. Rush
Member of Congress



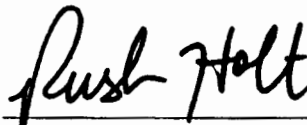
Gerald E. Connolly
Member of Congress



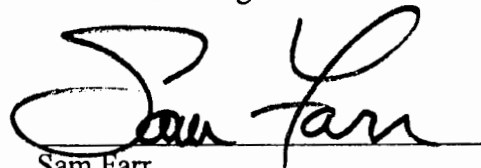
Nydia M. Velázquez
Member of Congress



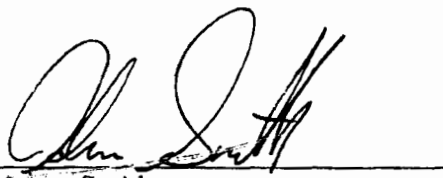
David Cicilline
Member of Congress



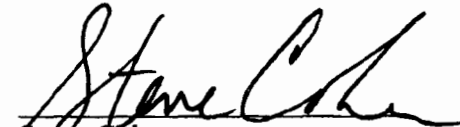
Rush D. Holt
Member of Congress



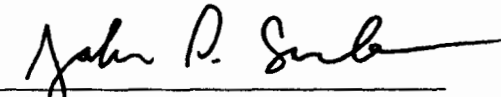
Sam Farr
Member of Congress



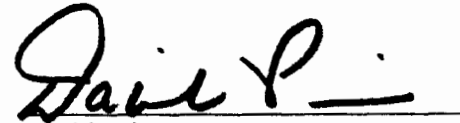
Adam Smith
Member of Congress



Steve Cohen
Member of Congress



John Sarbanes
Member of Congress



David Price
Member of Congress

cc: Gina McCarthy
AA for the Office of Air and Radiation



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB - 8 2013

OFFICE OF
AIR AND RADIATION

The Honorable Edward J. Markey
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter of December 10, 2012, to U.S. Environmental Protection Agency Administrator Lisa P. Jackson, co-signed by 55 of your colleagues, urging the agency to strengthen the National Ambient Air Quality Standards (NAAQS) for particulate matter. The Administrator asked me to respond on her behalf.

On December 14, 2012, the EPA took important steps to protect the health of Americans from fine particle pollution by strengthening the primary annual standard for fine particles ($PM_{2.5}$) from 15.0 to 12.0 micrograms per cubic meter ($\mu g/m^3$) and by retaining the 24-hour fine particle standard at 35 $\mu g/m^3$. In addition to revising the level of the primary annual $PM_{2.5}$ standard, the EPA is also revising the form of this standard to avoid potential disproportionate impacts on people who live below the poverty level and minority communities. The "form" of the standard defines the air quality statistic that is compared to the level of the standard to determine whether an area meets the standard. The agency is also retaining the existing primary standard for coarse particles (PM_{10}). To be consistent with the revised primary standards, the EPA is updating the Air Quality Index (AQI) for $PM_{2.5}$.

The strengthened primary annual $PM_{2.5}$ standard will provide increased public health protection from a range of adverse impacts, including premature death and harmful effects on the cardiovascular system, and decrease hospital admissions and emergency department visits for heart attacks, strokes and asthma attacks. This action will provide increased protection for children, older adults, people with pre-existing heart and lung disease, people of lower socioeconomic status and other at-risk populations.

Moreover, emission reductions from the EPA and state rules already on the books will help 99 percent of counties with monitors meet the revised $PM_{2.5}$ standards without additional emissions reductions. These rules include clean diesel rules for vehicles and fuels, and rules to reduce pollution from power plants, locomotives, and marine vessels, among others. The EPA estimates that meeting the annual primary $PM_{2.5}$ standard of 12.0 $\mu g/m^3$ will provide health benefits worth an estimated \$4 billion to \$9.1 billion per year in 2020 – a return of \$12 to \$171 for every dollar invested in pollution reduction.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Cheryl Mackay in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2023.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy", written in a cursive style.

Gina McCarthy
Assistant Administrator

Congress of the United States

Washington, DC 20515

June 29, 2012

The Honorable Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

We write to request information regarding progress made by the Environmental Protection Agency (EPA) to update its testing and protocols regarding the use of dispersants, in the wake of the questions raised about their use throughout the Deepwater Horizon oil spill. Specifically, we note that the Government Accountability Office (GAO) has just released a report¹ (enclosed) that reviews the current science available on the effects of chemical dispersants used to mitigate surface impacts of an oil spill. The report concludes that very little is known about the impacts of chemical dispersants when applied below the surface and in cold Arctic regions, as well as about the possible long-term chronic effects dispersants may have even when used normally on the surface of a spill in temperate climates. Since fiscal year 2000, six federal agencies have spent approximately \$15.5 million on 106 dispersant related research projects, with more than half of the total funding occurring since the BP Deepwater Horizon disaster in the Gulf of Mexico. According to the GAO report, although many federal agencies have identified areas of needed research relating to dispersant use, limited budgets have prevented these agencies from actually funding these projects.

As Shell Oil Company prepares to open up vast areas in the Arctic Ocean for oil drilling and as offshore deep water drilling in the Gulf of Mexico expands, it is imperative that the EPA has a firm hold on the environmental consequences of dispersant use in both of these challenging and complex ecological environments.

¹ GAO-12-585: Oil Dispersants: Additional Research Needed, Particularly on Subsurface and Arctic Applications. See: <http://www.gao.gov/prerelease/3Fm7>

More than two years have passed since the BP Macondo well was capped and the oil flow halted in the Gulf of Mexico. During the 87-day spill, an unprecedented amount of oil was released into the Gulf of Mexico, making it the worst environmental disaster in U.S. history. One of the primary mitigation strategies employed by BP involved the application of chemical dispersants to break the oil into tiny droplets that scatter in the ocean and are thought to biodegrade more quickly. During the spill, for the first time in U.S. history, the EPA along with the U.S. Coast Guard authorized the application of chemical dispersants at the source of the leak, thousands of feet below the sea's surface. Despite attempts by the EPA to eliminate or reduce dramatically the amount of dispersants being used during mitigation efforts, exemptions to these limits were routinely granted to BP by the U.S. Coast Guard.² As a result, millions of gallons of a chemical dispersant were added to Gulf waters, contributing to a toxic stew of chemicals, oil and gas with long term impacts that are still not fully understood. The use of these chemicals deep in the water column also contributed to the formation of large plumes of dispersed oil particles below the surface, whose biodegradation rates and ecological impacts are still being studied.

As a part of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) that delineates procedures for responding to oil spills, the EPA maintains the Product Schedule, which lists chemical dispersants that may be authorized for use on oil discharges. During the BP oil spill cleanup, the main dispersant chosen for use was a product known as COREXIT. As a result of its prominence in the oil spill cleanup, the majority of toxicity and efficacy studies immediately following the spill were conducted on this particular dispersant brand. Both the presidential commission that investigated the Deepwater Horizon³ incident and the EPA Inspector General⁴ have recommended that EPA update the Product Schedule's testing protocols and requirements for listing. In addition, the EPA Inspector General made recommendations for EPA to improve its response during spills of national significance, including reviewing and updating contingency plans with additional information learned from the Deepwater Horizon oil spill response and establishing a research plan on the long term health and environmental impacts of dispersants.

In addition, in response to several oversight letters⁵ Rep. Markey sent to the EPA regarding the use of dispersants during the Deepwater Horizon disaster, the EPA stated that it "will undertake a review and evaluation of existing laws and regulations regarding dispersants for potential revision. Issues to address include toxicity, efficacy, and other

² Rep. Markey conducted extensive oversight into the response of the oil spill including an investigation into the overuse of dispersants. See: <http://markey.house.gov/rep-markeys-investigation-use-chemical-dispersants>

³ National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling* (Washington, D.C. January 2011).

See: <http://www.gpo.gov/fdsys/pkg/GPO-OILCOMMISSION/content-detail.html>

⁴ EPA, Office of Inspector General, *Revisions Needed to National Contingency Plan Based on Deepwater Horizon Oil Spill*, Report No. 11-P-0534 (Washington, D.C. Aug. 25, 2011).

See: <http://www.epa.gov/oig/reports/2011/20110825-11-P-0534.pdf>

⁵ See EPA's May 27th and August 5th response to Rep. Markey's letters: <http://markey.house.gov/rep-markeys-investigation-use-chemical-dispersants>

criteria associated with EPA's NCP Sup-part J regulation and the development of new tests and criteria." EPA also stated that it "plans to significantly increase our research on the potential human and environmental risks and impacts of the release of crude oil and the application of dispersants, surface washing agents, bio-remediation agents and other mitigation measures."

The GAO report states that since the Deepwater Horizon Incident the EPA has funded six dispersant research projects totaling \$1.3 million, and has collaborated with the Canadian government on a wave tank that mimics ocean conditions to conduct some of its dispersant-related research. Furthermore, the EPA notes that the agency is working with other agencies of the National Response Team and Alaska Regional Response Team to understand the unique aspects of certain oil spill situations occurring in the Arctic to better inform the authorization and use of dispersants. The agency also notes, however, that more research is needed to understand the short and long term impacts dispersants have through direct and indirect exposures.

To date, the EPA has not updated the Product Schedule that lists dispersants and other mitigation agents that can be used in response to an oil spill. In light of the expansion of offshore drilling in both the Gulf and Arctic regions it is necessary that the EPA ensure that future spill mitigation agents, such as dispersants, have undergone appropriate testing for real response situations prior to their deployment in our waterways. Therefore, we ask that you respond to the following questions by close of business on August 3, 2012:

1. What types of revisions does EPA plan on making to the way in which dispersants are evaluated for addition to the National Contingency Plan (NCP) Product Schedule? Do these plans take into account long-term non-fatal impacts on marine life? Human exposure? Subsurface use at low temperatures and high pressure? Use in Arctic environments where cold temperatures and ice are prominent? Testing on crude oil? Any other lessons learned from the BP Deepwater Horizon oil spill response? Please provide a detailed timeline describing EPA's plan for collecting such information and making all such revisions.
2. How will the information and lessons gained from the BP Deepwater Horizon oil spill response be used to review and update area and regional contingency plans? Does EPA plan on developing a policy that would require for periodic reviews and updates to contingency plans? If so, what is the timeframe contemplated for the completion and implementation of such a policy? If not, why not?
3. In the plans to revise the NCP, does EPA intend to request and maintain information from the dispersant manufacturer in terms of specific chemical ingredient listings and production capacities and other information that would help the response community better prepare for future oil spills? If not, why not?

4. Does EPA plan on modifying policies and procedures for the duration and volume of dispersant used when applied on the surface of an oil spill? How will these plans take into account lessons learned from Deepwater Horizon and other major national and international oil spills? Please fully describe all such modifications.
5. Does EPA plan on developing policies and procedures for the duration and volume of dispersant used when applied subsurface? How will these plans take into account lessons learned from Deepwater Horizon and other major national and international oil spills? Please fully describe all such policies and procedures.

Thank you for your assistance and cooperation in responding to this request. Should you have any questions, please have your staff contact Dr. Avenel Joseph of Rep Markey's staff at 202-225-2836 or Dan Pearson of the Science Committee Democratic Staff at 202-225-4494.

Sincerely,


Edward J. Markey


Brad Miller



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 19 2012

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

The Honorable Edward J. Markey
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Markey:

Thank you for your letter of June 29, 2012, to U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson requesting information on our regulatory efforts under Subpart J of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) governing the use of dispersants to mitigate oil spills. I appreciate the opportunity to address the concerns outlined in your letter.

Over the past several years, the EPA has conducted research on improved laboratory protocols for dispersant and bioremediation agent efficacy, and revisions to the Subpart J requirements to address these new protocols were under consideration prior to the Deepwater Horizon oil spill. Lessons learned during this event provided a basis for additional revisions.

Please be assured that we are working expeditiously to develop revisions needed to Subpart J. The proposed revisions are intended to increase the overall scientific soundness of the data and information on chemical agents used for oil spills including the efficacy, toxicity, long-term environmental impacts and other concerns raised during the Deepwater Horizon spill as a result of recent research.

Enclosed are the responses to the questions in your letter. If you have further questions, please contact me or your staff may call Carolyn Levine in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-1859.

Sincerely,

A handwritten signature in black ink that reads "Mathy Stanislaus". The signature is written in a cursive, flowing style.

Mathy Stanislaus
Assistant Administrator

Enclosure

Responses to Questions in June 29, 2012 letter

Question 1. What types of revisions does EPA plan on making to the way in which dispersants are evaluated for addition to the National Contingency Plan (NCP) Product Schedule? Do these plans take into account long-term non-fatal impacts on marine life? Human exposure? Subsurface use at low temperatures and high pressure? Use in Arctic environments where cold temperatures and ice are prominent? Testing on crude oil? Any other lessons learned from the BP Deepwater Horizon oil spill response? Please provide a detailed timeline describing EPA's plan for collecting such information and making all such revisions.

Response: Based on lessons learned from the Deepwater Horizon oil spill, the EPA is considering several modifications to the way in which dispersants are tested and evaluated for addition to the NCP Product Schedule (Schedule) including testing dispersant efficacy with a range of crude oils at a range of temperatures. In addition, the EPA is considering a range of tests for acute, developmental, and sub-chronic toxicity of the dispersant and the dispersant mixed with oils. The EPA is considering requiring product manufacturers provide information, such as a Material Safety Data Sheet (MSDS) to ensure that response personnel applying chemical and biological agents to oil spills are taking the proper precautions to prevent exposure to any harmful components.

After the rule is proposed and comments are received from the public, the EPA expects to review, analyze, and if necessary revise the proposed rule and prepare a final rule for agency and interagency review. Depending on the degree of technical issues raised, the agency will work toward a final rule in the late 2013 early 2014 timeframe.

Question 2. How will the information and lessons gained from the BP Deepwater Horizon oil spill response be used to review and update area and regional contingency plans? Does EPA plan on developing a policy that would require for periodic reviews and updates to contingency plans? If so, what is the timeframe contemplated for the completion and implementation of such a policy? If not, why not?

Response: Information and lessons learned from the BP Deepwater Horizon oil spill have already been reflected in a memorandum dated November 2, 2010, from me to the EPA Regional Administrators on "Revisions of Area Contingency Plans/Regional Contingency Plans Regarding Use of Dispersants on Oil Spills – Interim Actions" and a memorandum dated December 16, 2010, issued by the National Response Team (NRT) Chair Dana S. Tulis of the EPA and Vice-Chair Captain John Caplis of the U.S. Coast Guard regarding "Use of Dispersants on Oil Spills – Interim Actions." These memoranda map out a number of revisions to be addressed in Area Contingency Plans (ACP) and Regional Contingency Plans (RCP) until the Subpart J regulations are revised such as:

- Consider utilization of a hierarchy of preferred oil spill response measures like those used during DWH (mechanical recovery, *in-situ* burning, subsea dispersant, surface dispersant);
- Pre-authorization plans should have well documented site-specific and oil-specific rationale for, and conditions/limitations to, the use of dispersants and other chemical countermeasures such as identification of environmental tradeoffs, net environmental benefits and factors such as

water depth, distance from shorelines, quantity limits, monitoring and data collection and regular re-evaluation of the criteria and operational conditions for dispersant use;

- Make data and decisions publicly transparent, involve appropriate stakeholders, clearly identify roles and responsibilities for dispersant and chemical agent use; and
- Review and reinstate Endangered Species Act (ESA) emergency consultation protocols.

The NRT is also developing guidance for Area Committees (AC) and Regional Response Teams (RRT) on dispersant use and monitoring. In addition, the EPA is considering a recommendation in guidance or, alternatively, a requirement for periodic reviews and updates of contingency plans in the proposed revisions to Subpart J.

Question 3. In the plans to revise the NCP, does EPA intend to request and maintain information from the dispersant manufacturer in terms of specific chemical ingredient listings and production capacities and other information that would help the response community better prepare for future oil spills? If not, why not?

Response: We are considering requirements in the proposed rule to address production capacities, product availability and other data to provide planners and responders the best information available for selecting agents to be used on an oil discharge.

Question 4. Does EPA plan on modifying policies and procedures for the duration and volume of dispersant used when applied on the surface of an oil spill? How will these plans take into account lessons learned from Deepwater Horizon and other major national and international oil spills? Please fully describe all such modifications.

Response: See combined response to #4 and #5 below.

Question 5. Does EPA plan on developing policies and procedures for the duration and volume of dispersant used when applied subsurface? How will these plans take into account lessons learned from Deepwater Horizon and other major national and international oil spills? Please fully describe all such policies and procedures.

Response: Considerations for the duration and volume of dispersant use, either on the surface or subsea, are addressed by ACs and RRTs during the development of pre-authorization plans or during evaluations of oil spill response actions and authorization for the use of dispersants at the time of a spill. As noted above, the memoranda issued in 2010 call for actions by ACs and RRTs to address dispersant use. In addition, the NRT is developing guidance for RRTs and responders on surface and subsurface dispersant use, effectiveness and monitoring. Finally, the EPA is considering several revisions to the Subpart J requirements to address dispersant use including elements to be addressed during pre-authorization planning or authorization at the time of a spill and monitoring the use of dispersants during certain oil spills to address concerns associated with the duration and volume of dispersant use.

DOC HASTINGS, WA
 CHAIRMAN
 DON YOUNG, AK
 JOHN J. DUNCAN, JR., TN
 LOUIE GOHMERT, TX
 ROB BISHOP, UT
 DOUG LAMBORN, CO
 ROBERT J. WITTMAN, VA
 PAUL C. BROUN, GA
 JOHN FLEMING, LA
 MIKE COFFMAN, CO
 TOM MCCLINTOCK, CA
 GLENN THOMPSON, PA
 JEFF DENHAM, CA
 DAN BENISHEK, MI
 DAVID RIVERA, FL
 JEFF DUNCAN, SC
 SCOTT R. TIPTON, CO
 PAUL A. GOSAR, AZ
 RAUL R. LABRADOR, ID
 KRISTI L. NOEM, SD
 STEVE SOUTHERLAND II, FL
 BILL FLORES, TX
 ANDY HARRIS, MO
 JEFFREY M. LANDRY, LA
 CHARLES J. "CHUCK" FLEISCHMANN, TN
 JON RUNYAN, NJ
 BILL JOHNSON, OH

TODD YOUNG
 CHIEF OF STAFF

U.S. House of Representatives
Committee on Natural Resources
 Washington, DC 20515

EDWARD J. MARKEY, MA
 RANKING DEMOCRATIC MEMBER
 DALE E. KILDEE, MI
 PETER A. DEFazio, OR
 ENI F.H. FALEOMAVAEGA, AS
 FRANK PALLONE, JR., NJ
 GRACE F. NAPOLITANO, CA
 RUSH D. HOLT, NJ
 RAUL M. GRIJALVA, AZ
 MADELEINE Z. BORDALLO, GU
 JIM COSTA, CA
 DAN BOREN, OK
 GREGORIO KILI CAMACHO SABLAN, CNMI
 MARTIN HEINRICH, NM
 BEN RAY LUJAN, NM
 DONNA M. CHRISTENSEN, VI
 JOHN P. SARBANES, MD
 BETTY SUTTON, OH
 NIKI TSONGAS, MA
 PEDRO R. PIERLUISI, PR
 JOHN GARAMENDI, CA
 COLLEEN W. HANABUSA, HI

JEFFREY DUNCAN
 DEMOCRATIC STAFF DIRECTOR

April 5, 2011

The Honorable Lisa Jackson
 Administrator
 Environmental Protection Agency
 Ariel Rios Building
 1200 Pennsylvania Avenue, N.W.
 Washington, D.C. 20460

Dear Administrator Jackson:

We write to request information regarding the Environmental Protection Agency's (EPA) plans to implement protections for endangered salmon populations that are being adversely impacted by the use of certain pesticides. Under Section 7 of the Endangered Species Act (ESA), the EPA, like all federal agencies, is required to consult with the National Marine Fisheries Service (NMFS) or the U.S. Fish and Wildlife Service (FWS) to ensure that no agency action will jeopardize the continued existence of a species protected under the ESA.

Under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), EPA is responsible for registering pesticides and setting mandatory labeling requirements for how they may be safely used. In response to litigation, EPA agreed for the first time to initiate an ESA consultation on the effects of 37 commonly used pesticides on salmon populations in the Northwest. Since then, NMFS has completed two Biological Opinions (BiOps) that concluded that continued use of the pesticides in question would jeopardize the existence of listed salmon species. The first of these was issued in November 2008 and determined that current use practices for Chlorpyrifos, Diazinon, and Malathion jeopardized the continued existence of 27 listed salmon species.¹ The second BiOp was issued in April 2009, when NMFS concluded that the use of Carbaryl, Carbofuran, and Methomyl was likely to result in jeopardy for 22 listed salmon species.² In BiOp 3, issued August 2010, NMFS found that 25 listed salmon species are likely to be put in jeopardy, directly or through adverse effects on their habitat, by Bensulide,

¹ http://www.nmfs.noaa.gov/pr/pdfs/pesticide_biop.pdf

² <http://www.nmfs.noaa.gov/pr/pdfs/carbamate.pdf>

Dimethoate, Ethoprop, Methidathion, Naled, Phorate, and Phosmet.³ EPA's response to BiOp 3 is expected in August, 2011.

As required under Section 7 of the ESA, NMFS included Reasonable and Prudent Alternatives (RPAs) for the re-registration of these pesticides in its BiOp determinations, which would alleviate the risk of jeopardy to the impacted salmon species. These RPAs required changes to the labels of each pesticide setting forth how the pesticides are used, required the creation of buffer zones between where the pesticides are applied and salmon habitat, set forth weather-related limitations on when the pesticide can be safely applied, and required pesticide registrants to report incidents of fish kills. Both BiOps 1 and 2 provided EPA with a one year window for action, in which EPA could modify the regulatory requirements for the application of these pesticides. This one year window for action has now passed for BiOps 1 and 2. We are concerned that by failing to implement changes to pesticide use, as recommended by NMFS, EPA has jeopardized nearly every endangered salmon species in the Northwest and is holding ransom the potential billions of dollars in economic benefits that would come from the full recovery of salmon species.

We are concerned that EPA's delays in implementing the RPA's will lead to irreversible damage to the salmon populations in the Northwest and adversely affect the vibrant ecosystem and economic activity of the region. In order to better understand EPA's plans and progress with implementing protections for the Northwest endangered salmon species, we ask that you respond to the following questions and requests for information no later than April 22, 2011:

- 1) It is our understanding that under FIFRA, the Administrator must initiate cancellation procedures to nullify the registration of a pesticide when its use, in accordance with commonly recognized practice, causes unreasonable adverse effects on the environment. In your opinion, does jeopardizing the continued existence of most of the Pacific Northwest salmon populations qualify as an unreasonable adverse effect on the environment? If not, please explain.
- 2) It is our understanding that in lieu of canceling the registration for the pesticides in question, EPA has attempted to make alternative arrangements with the pesticide registrants regarding voluntary changes to their labeled use, but that the EPA has been unable to find common ground with the registrants, and no additional discussions have taken place since May of 2010. Please describe what, if any, other options remain for EPA to pursue short of cancellation of the pesticide registrations for Chlorpyrifos, Diazinon, and Malathion, as well as Carbaryl, Carbofuran, and Methomyl. If EPA believes it has other legal options available to it, please provide a detailed timeline of when such options will be presented to the registrants. If no other options remain, please provide a detailed timeline for the development of a notice of intent to cancel the above listed pesticides' registrations.
- 3) It is our understanding that when companies apply for the registration of new pesticides and as existing pesticides are up for the re-registration process, EPA will be

³ http://www.nmfs.noaa.gov/pr/pdfs/final_batch_3_opinion.pdf. NMFS determined that the use of five other pesticides would not cause jeopardy for any listed salmon species.

required to consult with NMFS and/or the U.S. Fish and Wildlife Service whenever their use could adversely impact threatened or endangered species. How does EPA plan on addressing the nationwide backlog of pesticide registrations or re-registrations that will require consultations, and ensure that reasonable and prudent alternatives are implemented in a timely manner so as not to further jeopardize the existence of a species?

- 4) Section 7(a)(1) of the ESA directs Federal agencies to utilize their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of endangered species. Included within BiOps 1 and 2 were conservation recommendations that NMFS suggested to minimize adverse effects of listed salmon. Given EPA's lengthy delays in implementing the RPAs, please describe to what extent EPA has implemented the conservation programs that were recommended. Specifically, has EPA (1) conducted mixture toxicity analysis in screening-level and endangered species biological evaluations; (2) developed models to estimate pesticide concentrations in off-channel habitats; (3) developed models to estimate pesticide concentrations in aquatic habitats associated with non-agricultural applications, particularly in residential and industrial environments?⁴ If yes, please provide detailed information about the status of each of these efforts. If not, why not?
- 5) On March 10th, the EPA together with the FWS, NMFS, and USDA requested that the National Academy of Sciences (NAS) review the scientific and technical issues involved in ESA consultations on FIFRA registration activities.⁵ While we strongly support a rigorous scientific framework, we do not believe that this review should be utilized to stall any pending actions or the implementation of current and potentially forthcoming RPAs that would reduce risk to listed salmon species. It is our understanding that this NAS review would at a minimum take 18 months. Given that Section 6(d) of FIFRA contemplates a 60-day NAS review as part of any cancellation procedure, an 18 month NAS review for the already completed BiOps at this point would be an unreasonable delay. Please explain what actions EPA plans on taking during the NAS review period to comply with the deadlines established in the law and ensure that listed salmon species are not further jeopardized by use of the pesticides in question.
- 6) As a part of the requested NAS study, we encourage the EPA to support a full review of its practices during the preparation of Biological Assessments, which too often fail to account for the sub-lethal, indirect, synergistic, and cumulative impacts of both the active and inert ingredients in pesticides. As the NAS study design process progresses, please report on the research plan that will be submitted to the NAS, and how the results of this study will be utilized with respect to future consultations under FIFRA, the already completed BiOps, and the soon to be completed BiOp 4.

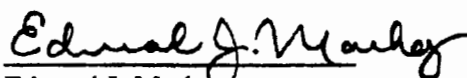
Thank you for your assistance and cooperation in responding to this request. We ask that you please provide a full and complete response to the questions and information requests

⁴ http://www.nmfs.noaa.gov/pr/pdfs/final_batch_3_opinion.pdf p. 810.

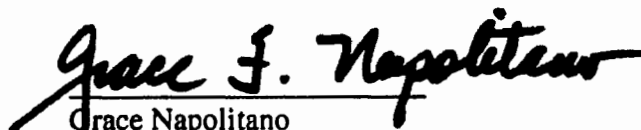
⁵ <http://www.epa.gov/oppfead1/endanger/nas-esa-letter.pdf>

contained in this letter by close of business on Friday, April 22, 2011. With respect to the requests relating to the NAS study design process and research plan, please direct your staff to contact the Committee's Democratic staff regarding the timetable for submission of your response. Should you have any questions about this request, please have your staff contact Brett Hartl of the Natural Resources Committee Democratic Staff at 202-225-6065 or Dr. Avenel Joseph of Rep. Markey's staff at 202-225-2836.

Sincerely,



Edward J. Markey
Ranking Member
Natural Resources Committee



Grace Napolitano
Ranking Member
Subcommittee on Water and Power



John Garamendi
Member
Natural Resources Committee

cc: The Honorable Gary Locke
Secretary
U.S. Department of Commerce
Fourteenth Street and Constitution Avenue, N.W.
Washington, D.C. 20230



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 28 2011

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

The Honorable Edward J. Markey
Ranking Member
Natural Resources Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter of April 5, 2011, to Environmental Protection Agency (EPA) Administrator Lisa Jackson regarding EPA's progress in implementing mitigation measures for specific pesticides identified in Biological Opinions issued by the National Marine Fisheries Service (NMFS) in November 2008 and April 2009. Since my office is responsible for regulating pesticides, I am responding to your letter.

EPA is committed to carrying out our obligations under the Endangered Species Act (ESA) and has been working to develop, with the U.S. Departments of Commerce and Interior, scientific methods and procedures that allow us to do that within the context of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The three agencies have established mechanisms at the technical, management, and senior executive levels of the federal government to accomplish this and set out a reasonable and effective path forward. In spite of these efforts, there remain scientific and technical issues for which resolution has not been reached. As you are aware, the three agencies along with the U.S. Department of Agriculture are pursuing further progress on these issues by asking the National Academy of Sciences (NAS) to provide its independent scientific perspective for the federal government's consideration.

Once completed, the federal government will consider the conclusions of the NAS and determine how its recommendations might best move us toward resolution of the complex issues surrounding development of a program that is consistent with both the ESA and FIFRA for pesticide registration actions. Meanwhile, EPA continues its work with the other federal agencies to explore resolution of issues, carry out assessments related to potential effects of pesticide registrations to endangered species, and identify more effective methods for stakeholder input to the process.

Your letter to Administrator Jackson contained several specific questions. I have enclosed with this letter EPA's response to those questions. Thank you for sharing your concerns and I look forward to further discussion on these important issues.

If you have further questions, please contact me or your staff may call Sven-Erik Kaiser in EPA's Office of Congressional and Intergovernmental Relations at (202) 566-2753.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Owens", written over a horizontal line.

Stephen A. Owens
Assistant Administrator

Enclosure

**Response to Questions in April 5 2011, letter from
Honorable Edward J. Markey to EPA Administrator Lisa Jackson**

Question 1: It is our understanding that under FIFRA, the Administrator must initiate cancellation procedures to nullify the registration of a pesticide when its use, in accordance with commonly recognized practice, causes unreasonable adverse effects on the environment. In your opinion, does jeopardizing the continued existence of most of the Pacific Northwest salmon populations qualify as an unreasonable adverse effect on the environment? If not, please explain.

Question 2: It is our understanding that in lieu of canceling the registration for the pesticides in question, EPA has attempted to make alternative arrangements with the pesticide registrants regarding voluntary changes to their labeled use, but that the EPA has been unable to find common ground with the registrants, and no additional discussions have taken place since May of 2010. Please describe what, if any, other options remain for EPA to pursue short of cancellation of the pesticide registrations for Chlorpyrifos, Diazinon, and Malathion, as well as Carbaryl, Carbofuran, and Methomyl. If EPA believes it has other legal options available to it, please provide a detailed timeline of when such options will be presented to the registrants. If no other options remain, please provide a detailed timeline for the development of a notice of intent to cancel the above listed pesticides' registrations.

While we would like to respond fully to your first two questions, EPA is currently involved in litigation in U.S. district court regarding the implementation of the NMFS biological opinions addressed in your letter. Because these are matters currently before the U.S. District Court in *NCAP v. EPA* (W.D. Wash.), we cannot provide detailed responses at this time. However, in response to your first question we can say as a general matter, that FIFRA provides EPA with the authority to protect listed species in a manner consistent with the directives of the ESA. In response to your second question, we can tell you that EPA informed the National Marine Fisheries Service that EPA planned to seek adoption of alternative measures to those provided in NMFS biological opinion. Since the manufacturers of pesticides addressed in the first biological opinion rejected the adoption of those measures, EPA has commenced a process for determining how it might address the Service's opinion without the voluntary agreement of the registrants.

Question 3: It is our understanding that when companies apply for the registration of new pesticides and as existing pesticides are up for the re-registration process, EPA will be required to consult with NMFS and/or the U.S. Fish and Wildlife Service when ever their use could adversely impact threatened or endangered species. How does EPA plan on addressing the nationwide backlog of pesticide registrations or reregistrations that will require consultations, and ensure that reasonable and prudent alternatives are implemented in a timely manner so as not to further jeopardize the existence of a species?

Although challenging, EPA plans to come into compliance with Section 7 of the ESA through its registration review program by providing an endangered species assessment for each pesticide being reviewed. Registration review replaces EPA's completed pesticide reregistration and tolerance reassessment programs. Registration review operates continuously, encompassing all registered pesticides. Under this continuous review program, EPA reviews each registered pesticide every 15 years to determine whether it still meets the FIFRA standard for registration. The Agency must complete the registration review of each new pesticide active ingredient within 15 years of its initial registration.

By law, the Agency must complete the first 15-year cycle of registration review by October 1, 2022. To meet this requirement, EPA is opening at least 70 dockets annually, continuing through 2017, so that almost all pesticides registered at the start of the program will have dockets opened by 2017. As of fiscal year 2011, 739 pesticide cases comprising 1,155 active ingredients are scheduled for registration review. EPA plans to provide an endangered species assessment for each of these pesticides. This ambitious schedule includes multiple comment periods and opportunities for stakeholders to provide information relevant to pesticide risk assessment. To accomplish its plan, EPA is adapting its registration review program process to accommodate ESA-related work. EPA is working to improve coordination across staff working on endangered species assessments.

EPA's ultimate success in meeting its ESA and FIFRA requirements through registration review will require agreement with the Services on scientific methods, approaches and schedules for initiating and completing consultations.

Question 4: Section 7(a)(1) of the ESA directs Federal agencies to utilize their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of endangered species. Included within BiOps 1 and 2 were conservation recommendations that NMFS suggested to minimize adverse effects of listed salmon. Given EPA's lengthy delays in implementing the RPAs, please describe to what extent EPA has implemented the conservation programs that were recommended. Specifically, has EPA (1) conducted mixture toxicity analysis in screening-level and endangered species biological evaluations; (2) developed models to estimate pesticide concentrations in off-channel habitats; (3) developed models to estimate pesticide concentrations in aquatic habitats associated with non-agricultural applications, particularly in residential and industrial environments? If yes, please provide detailed information about the status of each of these efforts. If not, why not?

EPA, along with the U.S. Departments of Agriculture, Commerce, and Interior, has committed to explore these and other critical scientific and methodology issues through independent review and advice from the National Academy of Sciences (NAS). Among the scientific issues NAS has been asked to explore are: ways in which the potential for effects on listed species of mixtures in formulated products or in the environment could best be accounted for in risk assessments; protocols governing the development of assumptions associated with model inputs; and the use of sensitivity analyses to evaluate the impact of multiple assumptions on the interpretation of model results.

Resolution of scientific and technical differences on how to assess the potential effects of pesticides on endangered species through the NAS review is critical to successful evaluation of potential risks to listed species and successful consultation between EPA and the Departments of Commerce and Interior. To that end, EPA and the Departments of Agriculture, Commerce, and Interior are committed to the successful execution of this NAS review as soon as possible:

Question 5: On March 10, the EPA together with the FWS, NMFS, and USDA requested that the National Academy of Sciences (NAS) review the scientific and technical issues involved in ESA consultations on FIFRA registration activities. While we strongly support a rigorous scientific framework, we do not believe that this review should be utilized to stall any pending actions or the implementation of current and potentially forthcoming RPAs that would reduce risk to listed salmon species. It is our understanding that this NAS review would at a minimum take 18 months. Given that Section 6(d) of FIFRA contemplates a 60-day NAS

review as part of any cancellation procedure, an 18 month NAS review for the already completed BiOps at this point would be an unreasonable delay. Please explain what actions EPA plans on taking during the NAS review period to comply with the deadlines established in the law and ensure that listed salmon species are not further jeopardized by use of the pesticides in question.

EPA is currently involved in litigation in U.S. district court regarding the implementation of the NMFS biological opinions addressed in your letter. Because these are matters currently before the U.S. District Court in *NCAP v. EPA* (W.D. Wash.), EPA must respectfully decline to address the specific issues you have raised regarding the interface between the FIFRA and ESA standards and EPA's options for addressing the NMFS biological opinions under FIFRA.

However, with that said, EPA's work with the Departments of the Interior and Commerce is not being halted during the pendency of independent scientific peer review. We are continuing meetings of a workgroup that was established to discuss and resolve technical issues with the goal of developing a more efficient and effective program of consultation under the ESA for pesticide registration actions. EPA also is addressing the concerns of stakeholders who are requesting more opportunities to review and comment specifically on EPA's endangered species risk assessments and the Services' biological opinions. EPA is working with stakeholders to identify the types of information that will help inform EPA's and the Services' assessments on endangered species and at which point in the registration review program process to inject that information for maximum benefit. For example, the Minor Crop Farmers Alliance is hosting a workshop in May to discuss the ESA consultation process and gain input from grower representatives about how they might better participate. EPA, the Department of Commerce and the Department of the Interior have been invited and plan to participate in that workshop. EPA will use the results of this grower-sponsored workshop and the input EPA continues to receive from all interested stakeholders through other avenues as we explore opportunities to broaden stakeholder participation in the consultation process.

Question 6: As a part of the requested NAS study, we encourage the EPA to support a full review of its practices during the preparation of Biological Assessments, which too often fail to account for the sub-lethal, indirect, synergistic, and cumulative impacts of both the active and inert ingredients in pesticides. As the NAS study design process progresses, please report on the research plan that will be submitted to the NAS, and how the results of this study will be utilized with respect to future consultations under FIFRA, the already completed BiOps, and the soon to be completed BiOp 4.

The federal government is requesting that NAS review the best scientific methods available for projecting these types of effects and considering options for development of additional methods that may be helpful in characterizing sub-lethal, indirect and cumulative effects. It will consider the selection and use of uncertainty factors to account for formulation toxicity, synergy, additivity, etc., and discuss how the choice of those factors affects the estimates of risk. Further NAS will explore potential methodology for projecting the effects of inert ingredients such as adjuvants, surfactants and other additives.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 01 2011

OFFICE OF
CHIEF FINANCIAL OFFICER

The Honorable Ed Markey
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

On behalf of the Environmental Protection Agency (EPA), I am pleased to enclose the *FY 2011-2015 Strategic Plan*. A pre-publication version was formally transmitted to the Congress on September 30, 2010, as required by the Government Performance and Results Act of 1993 (GPRA).

EPA's *FY 2011-2015 Strategic Plan* provides a blueprint for accomplishing our priorities for the next five years. This *Plan* presents five strategic goals for advancing our environmental and human health mission outcomes accompanied by five cross-cutting fundamental strategies that set expectations for how the Agency works to achieve these goals.

This *Plan* sets forth our vision and commitment to protect human health and to preserve the environment for future generations as we undertake the important work that lies ahead. We will continue to work closely with the Congress as we implement the GPRA Modernization Act of 2010 to sustain attention on our priorities and achieve measurable results.

If you have questions regarding this *Plan* or would like additional copies, please have your staff contact Clara Jones in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3701 or jones.clara@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara J. Bennett", is written over a horizontal line.

Barbara J. Bennett
Chief Financial Officer

Enclosure



U.S. ENVIRONMENTAL PROTECTION AGENCY

FY 2011–2015 EPA Strategic Plan

Achieving
Our Vision

EPA's Mission:
To Protect Human Health and the Environment

Strategic Goals

Goal 1: Taking Action on Climate Change and Improving Air Quality

Goal 2: Protecting America's Waters

Goal 3: Cleaning Up Communities and Advancing Sustainable Development

Goal 4: Ensuring the Safety of Chemicals and Preventing Pollution

Goal 5: Enforcing Environmental Laws

Cross-Cutting Fundamental Strategies

Expanding the Conversation on Environmentalism

Working for Environmental Justice and Children's Health

Advancing Science, Research, and Technological Innovation

Strengthening State, Tribal, and International Partnerships

Strengthening EPA's Workforce and Capabilities

Core Values:

Science, Transparency, Rule of Law

Fiscal Year 2011–2015 EPA Strategic Plan

Achieving Our Vision

U.S. Environmental Protection Agency
September 30, 2010

Table of Contents

Message from the Administrator	1
Introduction	4
Strategic Goals.....	6
Goal 1: Taking Action on Climate Change and Improving Air Quality	6
Goal 2: Protecting America's Waters	11
Goal 3: Cleaning Up Communities and Advancing Sustainable Development	15
Goal 4: Ensuring the Safety of Chemicals and Preventing Pollution.....	19
Goal 5: Enforcing Environmental Laws	23
External Factors and Emerging Issues.....	25
Summary of Program Evaluation	27
Cross-Cutting Fundamental Strategies.....	28
Expanding the Conversation on Environmentalism	29
Working for Environmental Justice and Children's Health.....	30
Advancing Science, Research, and Technological Innovation	32
Strengthening State, Tribal, and International Partnerships	34
Strengthening EPA's Workforce and Capabilities.....	36
Strategic Measurement Framework	37
Goal 1: Taking Action on Climate Change and Improving Air Quality	43
Goal 2: Protecting America's Waters	46
Goal 3: Cleaning Up Communities and Advancing Sustainable Development.	49
Goal 4: Ensuring the Safety of Chemicals and Preventing Pollution.....	52
Goal 5: Enforcing Environmental Laws.	54

Message from the Administrator

Since beginning my tenure as Administrator of the U.S. Environmental Protection Agency, I have been challenged by the difficult issues we face and inspired by the talent and dedication of our extraordinary work force. There is no doubt the EPA is on the job. We have made exceptional progress in protecting the environment of America's communities and restoring the trust of the American people. And we have made a number of historic environmental advances along the way. The year 2010 marks the EPA's 40th anniversary. It is a moment of celebration but also a time when we face some of the most complex and far-reaching environmental challenges in the history of the EPA, our nation and our planet. It is critical that we work harder and look further ahead.

The EPA's FY 2011–2015 *Strategic Plan* provides a blueprint for accomplishing our priorities for the next five years. This plan presents five strategic goals for advancing our environmental and human-health mission outcomes, accompanied by five cross-cutting fundamental strategies that seek to focus the EPA's work to meet the growing environmental protection needs of the day. To follow the Administration's focus on strengthening programs and achieving results, the EPA is implementing near-term Priority Goals that serve as key indicators of progress toward our five strategic goals. We will continue to affirm the core values of science, transparency and the rule of law in addressing these priorities. These are the most urgent issues we must confront through 2015.

As we prepared this strategic plan, we also were responding to one of the nation's worst environmental disasters, the Deepwater Horizon BP oil spill, which seriously affected the ecological and economic health of the Gulf Coast's communities. A sustained, effective recovery and restoration effort will require significant commitments of resources, scientific and technical expertise and coordination with a range of partners in the months and years ahead. This strategic plan offers a solid foundation for the EPA's long-term response to the impacts of the BP oil spill. As President Obama has said, our government will do "everything in our power to protect our natural resources, compensate those who have been harmed, rebuild what has been damaged, and help this region persevere like it has done so many times before." The EPA will work tirelessly to address the environmental and human-health effects and set the Gulf Coast on the path to recovery.

The EPA's Strategic Goals

Taking Action on Climate Change and Improving Air Quality: America's communities face serious health and environmental challenges from air pollution and the growing effects of climate change. During my first year as Administrator, the EPA finalized an endangerment finding on greenhouse gases, proposed the first national rules to reduce greenhouse-gas emissions under the Clean Air Act and initiated a national reporting system for greenhouse-gas emissions. All of these advances signaled historic progress in the fight against climate change. Climate change must be considered and integrated into all aspects of our work. While the EPA stands ready to help Congress craft strong, science-based climate legislation that addresses the spectrum of issues, we will assess and develop regulatory tools as warranted under law using the authority of the Clean Air Act.

We have strengthened the ambient air-quality standards for nitrogen dioxide and sulfur dioxide and proposed stronger standards for ozone, which will help millions of Americans breathe easier and lead healthier lives. We also are developing a comprehensive strategy for a cleaner and more efficient power sector, with strong and achievable emission-reduction goals for sulfur dioxide, nitrogen oxide, mercury and other air toxics. Strengthening the ambient air-quality standards consistent with the latest scientific information and gaining additional reductions in air toxics from a range of industrial facilities will significantly improve air quality and reduce risks to communities across the country. Improved monitoring, timely and thorough permitting and vigorous enforcement are our key tools for air-quality improvement.

Protecting America's Waters: Despite considerable progress, America's waters remain imperiled. From nutrient loadings and stormwater runoff to invasive species and drinking-water contaminants, water quality and enforcement programs face complex challenges that demand both traditional and innovative strategies. We will work hand-in-hand with states and tribes to develop nutrient limits and intensify our work to restore and protect the quality of the nation's streams, rivers, lakes, bays, oceans and aquifers. The EPA also will use its authority to protect and restore threatened natural treasures such as the Great Lakes, the Chesapeake Bay and the Gulf of Mexico; to address our neglected urban rivers; to ensure safe drinking water; and to reduce pollution from nonpoint and industrial dischargers. We will initiate measures to address post-construction runoff, water-quality impairments from surface mining and drinking-water contamination.

Cleaning Up Communities and Advancing Sustainable Development: Using all the tools at our disposal, including targeted enforcement and compliance efforts, the EPA will continue to make our communities safer and healthier. We are accelerating these efforts through our Superfund program to confront significant local environmental challenges. The collapse of a coal-ash impoundment in Kingston, Tenn., focused the EPA's attention on how these disposal facilities are managed nationwide. In response, the EPA proposed options for the nation's first rules to address the risks from the disposal of coal ash generated by coal-fired power plants. By maximizing the potential of our brownfields program to spur environmental cleanups and by fostering stronger partnerships with stakeholders affected by our cleanups, we are moving toward our goal of building sustainable, healthy, economically vibrant communities. And by strengthening our work with tribal communities, we are advancing our efforts to build environmental-management capacity and program implementation in Indian country.

Ensuring the Safety of Chemicals and Preventing Pollution: One of our highest priorities is ensuring the safety of the chemicals that make up the building blocks of modern society. Increasingly, the chemicals used to make our products, build our homes and support our way of life end up in the environment and in our bodies. Last year, the Administration announced principles for modernizing the more than 30-year-old Toxic Substances Control Act, under which we assess and regulate chemicals. To move forward and to make long-overdue progress, we are shifting our focus to filling in critical missing information on the chemicals most widely produced and used in commerce and addressing chemicals that pose unreasonable risk to the environment or human health. Pending legislative action by Congress, the EPA is strengthening its chemical safety program by coordinating with appropriate federal agencies to maximize use of current TSCA authorities, supported by the best available science, to aggressively assess and manage the risks of chemicals used in consumer products, the workplace and the environment. Additionally, under the Federal Insecticide, Fungicide, and Rodenticide Act, the EPA and the states register or license pesticides for use in the U.S. The EPA also is taking steps to increase transparency and public access to TSCA-related chemical information, committing to review and, where appropriate, to challenge and declassify Confidential Business Information claims for hundreds of annual new submissions and more than 20,000 previous submissions through FY 2015. By encouraging pollution prevention, we will promote the use of safer chemical alternatives, implement conservation techniques, promote efficient reuse of materials and better align the chemical-production processes with the principles of green chemistry.

Enforcing Environmental Laws: Effective, consistent enforcement is critical to achieving the human-health and environmental benefits expected from our environmental laws. The EPA, through the rule of law, will

ensure compliance with environmental requirements and, as warranted, will employ vigorous and targeted civil and criminal enforcement. We will achieve significant environmental results by focusing our efforts on the most serious water, air and chemical hazards and by working closely with states and tribes. We will protect the public by criminally prosecuting willful, intentional and serious violations of federal environmental laws.

The EPA's Cross-Cutting Fundamental Strategies

As a companion to our strategic goals, which chart the Agency's direction for achieving mission results during the next five years, the EPA's five cross-cutting fundamental strategies set explicit expectations for changing the way we approach our work. These five strategies will inform the work of every program and regional office and help us meet the challenges we face today.

Expanding the Conversation on Environmentalism: Every American has a stake in clean air and water, chemical safety, restoring contaminated industrial and mining sites and strong enforcement of environmental statutes. Every community must be part of the conversation. We will take broad steps to expand the conversation on environmentalism to communities across America, building capacity, increasing transparency and listening to the public. We will engage citizens to hear all the voices that must be part of our nation's dialogue on environmental issues.

Working for Environmental Justice and Children's Health: We will work alongside entities that bear important responsibilities for the day-to-day mission of environmental protection and strengthen oversight to ensure programs are consistently delivered nationwide. We will use a variety of approaches, including regulations, enforcement, research, community-based programs and outreach to protect children and low-income, minority and tribal populations disproportionately impacted by environmental and human-health hazards.

Advancing Science, Research and Technological Innovation: The EPA will advance the scientific research and technological innovation that is essential to enhancing our ability to protect human health and the environment.

Strengthening State, Tribal and International Partnerships: We will strengthen partnerships with states, tribes and the international community. Hand-in-hand with these partnership efforts and inclusive environmentalism, we will address pollution problems and protect human health.

Strengthening the EPA's Work Force and Capabilities: We will adopt improved, innovative and creative management approaches and exemplify stewardship, transparency and accountability in addressing increasingly complex environmental and human-health challenges. We will foster a culture of excellence and provide the infrastructure, technology, training and tools to support a talented, diverse, and highly motivated work force that supports the Administration's human capital and acquisition priorities.

Forty years after the birth of the EPA, we have a rare opportunity to spark a new era of environmental and human-health protection. The American people and countries around the world look to us for leadership. It is up to us to embrace this moment, so our children and grandchildren can have a cleaner, healthier future. We will face new challenges, new opportunities and new possibilities for achieving our vision of a cleaner, greener and more sustainable environment. I have tremendous confidence in the talent and spirit of our work force, and I know we will meet our challenges head-on, as One EPA. Fueled by our energy, our ideas, and our passion, this strategic plan will help guide our path to success.



Lisa P. Jackson

Introduction

Recent events in the Gulf Coast region and elsewhere have brought to the forefront how much we value our environment. Our homes, our livelihoods, our health and that of our children depend on clean water to drink, clean air to breathe, and healthy ecosystems that produce our food and the raw materials

that support modern life. The U.S. Environmental Protection Agency (EPA) and its mission to protect human health and the environment have never been more vital than they are today.



The Fiscal Year (FY) 2011–2015 EPA Strategic Plan responds to this increasing degree of environmental awareness and the challenges that lie ahead.¹ We have created a streamlined, executive-level Plan that sets the Agency's direction, advances the Administrator's priorities, and will be used routinely by the Agency's senior leadership as a management tool. We have sharpened our strategic goals and objectives and offer a more focused set of strategic measures to better inform our understanding of progress and challenges alike in managing our programs. We intend to pursue these goals and objectives as One EPA, through meaningful collaboration across the Agency. Our new cross-cutting fundamental strategies are directed at refocusing and tangibly changing the way we carry out our work. We anticipate that this new approach will foster a renewed commitment to accountability, transparency, and inclusion.

Our five strategic goals represent a simplified and meaningful approach to our work and reflect the results we hope to achieve on behalf of the American people:

- ◆ Goal 1: Taking Action on Climate Change and Improving Air Quality
- ◆ Goal 2: Protecting America's Waters
- ◆ Goal 3: Cleaning Up Communities and Advancing Sustainable Development

- ◆ Goal 4: Ensuring the Safety of Chemicals and Preventing Pollution

- ◆ Goal 5: Enforcing Environmental Laws

To achieve the long-term goals and associated objectives and strategic measures set out in this Plan, we will track progress through annual performance measures, which are presented in EPA's *Annual Performance Plans and Budgets*. We will report on our performance against these annual measures in our *Annual Performance Reports*, and use this performance information as we establish priorities, develop future budget submissions, and manage programs. Additionally, EPA reports on High Priority Performance Goals (Priority Goals), a new component of this Administration's performance management framework. Priority Goals are specific, measurable, ambitious, near-term targets that align with our long-term strategic measures and annual measures. The Priority Goals communicate the performance improvements we will accomplish relative to our priorities using existing legislative authority and resources. The Priority Goals constitute 18- to 24-month operational targets the Agency will work to accomplish, distinguishing the Priority Goals from the longer-term measures. This process will come full circle as we evaluate these performance data to develop future *Strategic Plans*.

Our measures for the FY 2011–2015 EPA Strategic Plan draw upon some of the indicators contained in

*EPA's 2008 Report on the Environment (ROE).*² The indicators help us to monitor trends in environmental conditions and environmental influences on human health. Our efforts to develop the report and regularly update the indicators have advanced our performance measurement work by bringing together existing and new analytical information on the environment and human health.

During the five-year horizon of this *Plan*, we know that we will face unanticipated challenges and opportunities that will affect our ability to achieve our objectives and the specific measurable results that we have described. In particular, we recognize that numerous entities vital to our success—federal³, state, tribal, and local governments, and cooperating partners and stakeholders—are operating under resource constraints that could impede our joint progress. This *Plan* provides the framework to address these challenges and make necessary adjustments.

This FY 2011–2015 *EPA Strategic Plan* sets forth our vision and commitment to preserve the environment for future generations and to protect human health in the places where people live, work, learn, and play. It is our hope that you will join us as we undertake the important work that lies ahead.

Consultation Efforts

The Government Performance and Results Act of 1993 directs all federal departments and agencies to consult with parties interested in or likely to be affected by a strategic plan. Consultation with EPA's federal, state, local, and tribal government partners and our many stakeholders is an integral part of the Agency's strategic planning process. To that end, EPA:

- Engaged with key partners and co-regulators throughout the effort to develop the *Draft Plan*.
- Significantly expanded our outreach efforts for public review of the *Draft FY 2011–2015 EPA Strategic Plan* to enhance transparency and inclusion. We issued, for the first time, a news release in both English and Spanish and a *Federal Register Notice* and used www.regulations.gov to encourage feedback on the *Draft Plan*.
- Sent notification letters to over 800 organizations and individuals to request input. These entities included leaders of the Agency's Congressional authorizing and appropriations committees; states and state associations; all federally-recognized tribes; tribal organizations; local government representatives; other federal agencies; public health organizations; environmental, public interest, and public policy groups; and representatives of the regulated community.
- Established an on-line discussion forum to engage with the public on implementing the cross-cutting fundamental strategies to tangibly change the way we work. Comments received through the discussion forum can be viewed at <https://blog.epa.gov/strategicplan>.

Our efforts to significantly expand our outreach for public review of the *Draft Plan* resulted in over 500 public comments, compared to approximately 50 public comments for prior *Draft Strategic Plans*.

End Notes:

- 1 The *Fiscal Year 2011–2015 EPA Strategic Plan* covers the timeframe from October 1, 2010 through September 30, 2015 unless otherwise noted.
- 2 EPA electronic *Report on the Environment* is available at <http://www.epa.gov/roe>.
- 3 Federal entities with whom we expect continued cooperation or coordination for EPA's five strategic goals include: Agriculture, Army Corps of Engineers, Commerce, Consumer Product Safety Commission, Defense, Education, Energy, Federal Emergency Management Agency, General Services Administration, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Justice, Labor, National Aeronautics and Space Administration, National Science Foundation, Nuclear Regulatory Commission, Small Business Administration, State, Transportation, Treasury, Tennessee Valley Authority, U.S. Agency for International Development, and U.S. Trade Representative.

Goal 1: Taking Action on Climate Change and Improving Air Quality



Reduce greenhouse gas emissions and develop adaptation strategies to address climate change, and protect and improve air quality.

Climate change poses risks to human health, the environment, cultural resources, the economy, and quality of life.¹ These changes are expected to create further challenges to protecting human health and welfare. Many effects of climate change are already evident and will persist into the future regardless of future levels of greenhouse gas (GHG) emissions. Potential climate change impacts may include, for example, increased smog levels in many regions of the country, making it more difficult to attain or maintain clean air. A rise in sea level or increased precipitation intensity may increase flooding, which would affect water quality, as large volumes of water can transport contaminants and overload storm and wastewater systems. In order to protect human health and the environment, EPA must recognize and consider the challenge a changing climate poses to the environment.

Since passage of the Clean Air Act Amendments in 1990, nationwide air quality has improved significantly.² Despite this progress, about 127 million Americans lived in counties that did not meet air quality standards for at least one pollutant in 2008. Long-term exposure to air pollution can cause cancer and damage to the immune, neurological, reproductive, cardiovascular, and respiratory systems.³ Because people spend much of their lives indoors, the quality of indoor air is also a major concern. Twenty percent of the population spends the day indoors in

Objectives:

- **Address Climate Change.** Reduce the threats posed by climate change by reducing greenhouse gas emissions and taking actions that help communities and ecosystems become more resilient to the effects of climate change.
- **Improve Air Quality.** Achieve and maintain health-based air pollution standards and reduce risk from toxic air pollutants and indoor air contaminants.
- **Restore the Ozone Layer.** Restore the earth's stratospheric ozone layer and protect the public from the harmful effects of ultraviolet (UV) radiation.
- **Reduce Unnecessary Exposure to Radiation.** Minimize unnecessary releases of radiation and be prepared to minimize impacts should unwanted releases occur.

Strategic Measures associated with this Goal are on pages 43 through 45.

elementary and secondary schools, where problems with leaky roofs and with heating, ventilation, and air conditioning systems can trigger a host of health problems, including asthma and allergies. Exposure to indoor radon is responsible for an estimated 20,000 premature lung cancer deaths each year.⁴

Reduce GHG Emissions and Develop Adaptation Strategies to Address Climate Change

EPA's strategies to address climate change support the President's GHG emissions reduction goals. EPA and its partners will reduce GHG emissions domestically and internationally through cost-effective, voluntary programs while pursuing additional regulatory actions as needed. Our efforts include:

- ◆ Developing and implementing a national system for reporting GHG emissions. (Implementing the mandatory GHG reporting rule is one of the Agency's Priority Goals.)⁵
- ◆ Issuing new standards to reduce emissions from cars and light-duty trucks for model years 2012 through 2016, extending that program to model year 2017 and beyond, and creating a similar program to reduce GHGs from medium- and heavy-duty trucks for model years 2014–2018. (Implementing the light-duty GHG rule is one of the Agency's Priority Goals.)⁶
- ◆ Developing standards to reduce GHG emissions from nonroad sources such as marine and aircraft and land-based nonroad equipment and locomotives.
- ◆ Implementing permitting requirements for facilities that emit large amounts of GHGs to encourage design and construction of more efficient and advanced processes that will contribute to a clean energy economy.
- ◆ Implementing refocused voluntary programs that maximize GHG reductions through the greater use of energy-efficient technologies, products, and practices, and promoting energy and transportation policies that benefit the environment and human health.
- ◆ Collaborating with state, local, and tribal governments on regulatory and policy initiatives, technical assistance, and voluntary programs related to climate change mitigation and adaptation.
- ◆ Collaborating with countries and other international partners to reduce methane emissions and

deliver clean energy to markets around the world through the Global Methane Initiative.

- ◆ Developing a comprehensive report to Congress on black carbon that will provide a foundation for evaluating future approaches to black carbon mitigation.
- ◆ Pursuing a sustainable, life-cycle approach to managing materials.
- ◆ Identifying and assessing substitute chemical and ozone-depleting substances and processes for their global-warming potential.
- ◆ Educating the public about climate change and actions people can take to reduce GHG emissions.

Adaptation initiatives aim to increase the resilience of communities and ecosystems to climate change by increasing their ability to anticipate, prepare for, respond to, and recover from the impacts of climate change. Many of the outcomes EPA is working to attain are sensitive to weather and climate. Consequently, every action EPA takes, including promulgating regulations and implementing programs, should take these fluctuations into consideration. For example, EPA models the ways in which weather affects air quality when it develops air quality standards, and cannot assume that climate is constant, an assumption typically made in the rulemaking process.

EPA must adapt and plan for future changes in climate, work with state, tribal, and local partners, and continue to collaborate with the U.S. Global Change Research Program and the Interagency Task Force on Climate Change Adaptation.⁷ The Agency must incorporate the anticipated, unprecedented changes in climate into its programs and rules, drawing on the critical information and tools provided by EPA researchers, to continue to fulfill statutory, regulatory, and programmatic requirements.

Improve Air Quality

Taking into account the most current health effects research findings⁸, EPA recently completed new, more health-protective standards for lead, sulfur dioxide, and nitrogen dioxide. We are in the process of reviewing the ozone, particulate matter, and carbon monoxide standards. Over the next five years, we will

work with states and tribes to develop and implement plans to achieve and maintain these standards. Our research provides the tools and information necessary for EPA, states, and tribes to implement air quality standards and controls.

In 2011, we expect to complete and begin implementing a rule to replace the Clean Air Interstate Rule that was remanded to us by the courts in 2008. Strengthening the standards and decreasing the emissions that contribute to interstate transport of air pollution will help many areas of the country attain the standards and achieve significant improvements in human health. As we implement the standards, we will do so in a way that protects disproportionately-impacted low-income and minority communities.

We are also working with partners and stakeholders to improve the overall air quality management system and to address air quality challenges expected over the next 10 to 20 years. These efforts include improving the state implementation plan

approval process, implementing a national training strategy, and developing effective air quality strategies that address multiple pollutants and consider the interplay between air quality and factors such as land use, energy, transportation, and climate.

We will address emissions from vehicles, engines, and fuels through an integrated strategy that combines regulatory approaches that take advantage of technological advances and cleaner fuels with voluntary programs that reduce vehicle, engine, and equipment activity and emissions. We are working with refiners, renewable fuel producers, and others to implement regulations to increase the amount of renewable fuel

blended into gasoline. Through the National Clean Diesel Campaign, we support diesel emission reductions that can be achieved through such actions as switching to cleaner fuels; engine retrofit, repair, and replacement; and idle reduction.

Air toxics are both widespread and community-specific. They are emitted by large industry, small businesses, motor vehicles, and many other common activities. While certain chemicals are ubiquitous throughout the country, in some areas of concentrated industrial and/or mobile source activity, concentrations may be significantly greater. EPA will continue to set and enforce control technology-based air toxics emissions standards and, where needed, amend those standards to address

residual risk and technology advancements.

EPA is developing a strategy aimed at reducing toxic air pollution from stationary sources in a way that targets priority categories of sources, reduces pollution in communities, utilizes a more cost-effective 'sector-based'

approach, and provides tools to help communities and other stakeholders participate in rulemaking. These priority categories include petroleum refining, iron and steel, chemical manufacturing, utilities, non-utility boilers, oil and gas, and Portland cement. As part of this strategy, EPA will take advantage of the natural overlap of certain air toxics and criteria pollutant rules and coordinate the development and implementation of Maximum Achievable Control Technology (MACT) and New Source Performance Standards (NSPS) where it makes sense. Often, there are opportunities to control air toxic and criteria pollutants together. By coordinating MACT standard



development for specific source categories with other rulemaking efforts, EPA can substantially reduce the resources needed to develop standards; provide more certainty and lower cost for industry; simplify implementation for states, local, and tribal agencies; and, enhance cost-effective regulatory approaches.

Along with these regulatory efforts, EPA has a wide range of voluntary efforts to reduce emissions, including programs to reduce multi-media and cumulative risks. Through data from our national toxics monitoring network and from national and local assessments, we are able to better characterize risks and assess priorities. We work with state and local agencies, tribes, schools, and community groups to identify communities where air toxics pollution is occurring at unsafe levels and aggressively take action to reduce air toxics pollution within those areas.

Often the people most exposed to air pollutants are those most susceptible to the effects—the young, the elderly, and the chronically ill. To improve indoor air quality, EPA deploys programs that educate the public about indoor air quality concerns, including radon, and promotes public action to reduce potential risks in homes, schools, and workplaces. EPA also collaborates with state and tribal organizations, environmental and public health officials, housing and building organizations, school personnel who manage school environments, and health care providers, who treat children prone to or suffering disproportionately from asthma. The focus of these efforts is to support communities' efforts to address indoor air quality health risks. We also provide policy and technical support and financially assist states and tribes in developing and implementing effective radon programs.

Restore the Ozone Layer

EPA will implement programs that reduce and control ozone-depleting substances (ODS), enforce rules on their production, import, and emission, and facilitate the transition to substitutes that reduce GHG emissions and save energy. We will continue partnership programs that minimize the release of ODS and programs that educate the public about the importance of protection from ultra-violet radiation.

Reduce Unnecessary Exposure to Radiation

Recognizing the potential hazards of radiation, Congress charged EPA with the primary responsibility for protecting people and the environment from harmful and avoidable exposures. In fulfilling this responsibility, we will review and update our radiation protection regulations and guidance, operate the national radiation monitoring system, maintain radiological emergency response capabilities, oversee the disposal of radioactive waste at the Waste Isolation Pilot Plant, inspect waste generator facilities, and evaluate compliance with applicable environmental laws and regulations.

Applied Research

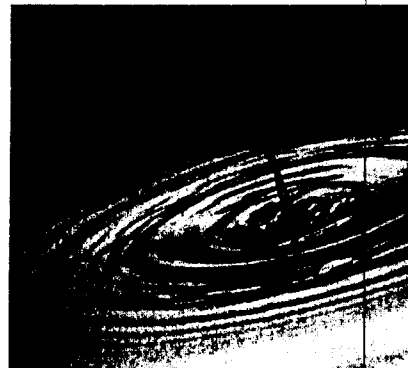
EPA's research efforts will focus on a number of air quality and climate areas over the next several years. In particular, EPA will:

- ◆ Conduct integrated science assessments of criteria air pollutants and provide new data and approaches for improving these assessments;
- ◆ Improve inventory and risk information to better inform Agency actions relative to air toxics;
- ◆ Promote resilience and adaptation by connecting air quality, water quality, and land use managers with climate change information and decision-support tools;
- ◆ Promote systems research and life-cycle analysis in analyzing the health and environmental impacts of energy production and operation, including biofuels; and,
- ◆ Investigate the influence of climate change on clean air, as well as the impacts of emissions from low-carbon fuels in transportation.

End Notes:

- 1 Thomas R. Karl, Jerry M. Melillo, and Thomas C. Peterson (eds.). 2009. *Global Climate Change Impacts in the United States* (New York, New York: Cambridge University Press). Available at <http://downloads.globalchange.gov/usimpacts/pdfs/climate-impacts-report.pdf>.
- 2 U.S. EPA, 2010. *Our Nation's Air-Status and Trends through 2008*. EPA-454/R-09-002. Available at <http://epa.gov/airtrends/2010/index.html>.
- 3 U.S. EPA, 2007. *The Plain English Guide to the Clean Air Act*. EPA-456/K-07-001. Available at <http://www.epa.gov/air/peg/peg.pdf>.
- 4 U.S. EPA, 2003. *EPA's Assessment of Risks from Radon in Homes*. EPA 402-R-03-003. Available at <http://www.epa.gov/radon/pdfs/402-r-03-003.pdf>.
- 5 Implementing the mandatory GHG reporting rule is one of the Agency's Priority Goals: By June 15, 2011, EPA will make publicly available 100 percent of facility-level GHG emissions data submitted to EPA in accordance with the GHG Reporting Rule, compliant with policies protecting confidential business information (CBI).
- 6 Implementing the light-duty GHG rule is one of the Agency's Priority Goals: In 2011, EPA, working with DOT, will begin implementation of regulations designed to reduce the GHG emissions from light-duty vehicles sold in the U.S. starting with model year 2012.
- 7 The U.S. Global Change Research Program coordinates and integrates federal research on changes in the global environment and their implications for society. It was mandated by Congress in the Global Change Research Act of 1990 (P.L. 101-606). In 2009, the White House Council on Environmental Quality, the Office of Science and Technology Policy, and the National Oceanic and Atmospheric Administration initiated the Interagency Climate Change Adaptation Task Force. When the President signed the Executive Order on Federal Leadership in Environmental, Energy, and Economic Performance in October 2009, he called on the Task Force to develop federal recommendations for adapting to climate change impacts both domestically and internationally.
- 8 U.S. EPA, 2006. *Air Quality Criteria for Lead (2006) Final Report*. EPA/600/R-05/144aF-bF. Available at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=158823>.
U.S. EPA, 2008. *Integrated Science Assessment (ISA) for Sulfur Oxides—Health Criteria (Final Report)*. EPA/600/R-08/047F. Available at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=198843>.
U.S. EPA, 2008. *Integrated Science Assessment for Oxides of Nitrogen—Health Criteria (Final Report)*. EPA/600/R-08/071. Available at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=194645>.

Goal 2: Protecting America's Waters



Protect and restore our waters to ensure that drinking water is safe, and that aquatic ecosystems sustain fish, plants and wildlife, and economic, recreational, and subsistence activities.

The nation's water resources are the life-blood of our communities, supporting our economy and way of life. Across most of our country, we enjoy and depend upon reliable sources of clean and safe water. Several decades ago, however, many of our drinking water systems provided water to the tap with very limited treatment. Drinking water was often the cause of illnesses linked to microbiological and other contaminants. Many of our surface waters would not have met today's water quality standards. Some of the nation's rivers were open sewers, posing health risks, and many waterbodies were so polluted that safe swimming, fishing, and recreation were not possible.

We have made significant progress since enactment of the landmark Clean Water Act and Safe Drinking Water Act almost 40 years ago. Today, the enhanced quality of our surface waters and the greater safety of our drinking water are testaments to decades of environmental protection and investment, but serious challenges remain. Small drinking water systems are particularly challenged by the need to improve infrastructure and develop the capacity to meet new and existing standards. Tens of thousands of homes, primarily in tribal and disadvantaged communities and the territories, still lack access to basic sanitation and drinking water. The rate at which new waters are listed for water quality impairments exceeds the pace at which restored waters are removed from the list.

Objectives:

- **Protect Human Health.** Reduce human exposure to contaminants in drinking water, fish and shellfish, and recreational waters, including protecting source waters.
- **Protect and Restore Watersheds and Aquatic Ecosystems.** Protect the quality of rivers, lakes, streams, and wetlands on a watershed basis, and protect urban, coastal, and ocean waters.

Strategic Measures associated with this Goal are on pages 46 through 48.

Pollution discharged from industrial, municipal, agricultural, and stormwater sources continue to be causes of water quality problems, but other significant contributors include loss of habitat and habitat fragmentation, hydrologic alteration, the spread of invasive species, and climate change. For many years, nonpoint source pollution—principally nitrogen, phosphorus, and sediments—has been recognized as the largest remaining impediment to improving water quality. Recent national surveys have found that our waters are stressed by nutrient pollution, excess sedimentation, and degradation of shoreline vegetation, which affect upwards of 50 percent of our lakes and streams.¹ Climate change will compound these

problems, highlighting the urgency to evaluate with our partners options for protecting infrastructure, conserving water, reducing energy use, adopting "green" infrastructure and watershed-based practices, and improving the resilience of infrastructural and natural systems, including utilities, watersheds, and estuaries.²

Over the next five years, EPA will work with states, territories, and tribes to safeguard human health, make America's water systems sustainable and secure, strengthen the protection of our aquatic ecosystems, improve watershed-based approaches, focus efforts in key geographic areas³, and take action on climate change. EPA has established two Priority Goals for the revision of drinking water standards to strengthen public health protection⁴ and the development of state watershed implementation plans in support of the Chesapeake Bay total maximum daily load called for in the Chesapeake Bay Protection and Restoration Executive Order.⁵ Working with our partners, the Agency's effort to protect our waters is aimed at two objectives—protecting human health and protecting and restoring watersheds and aquatic ecosystems.

Protect Human Health

Sustaining the quality and supply of our water resources is essential to safeguarding human health. More than 290 million people living in the United States rely on the safety of tap water provided by public water systems that are subject to national drinking water standards. Over the next five years, EPA will help protect human health and make America's water systems sustainable and secure by:

- ◆ Financing public water system infrastructure to protect and maintain drinking water quality;
- ◆ Strengthening compliance with drinking water standards;
- ◆ Continuing to protect sources of drinking water from contamination;

- ◆ Developing new and revising existing drinking water standards; and,
- ◆ Supporting states, tribes, territories, and local water systems in implementing these standards.

While promoting sustainable management of drinking water infrastructure, we will provide needed oversight and technical assistance to states, territories, and tribes so that their water systems comply with or exceed existing standards and are able to comply with new standards. We will also promote the construction of infrastructure that brings safe drinking water into the homes of small, rural, and disadvantaged communities and increase efforts to guard the nation's critical drinking water infrastructure.



In addition, EPA is actively working Agency-wide and with external partners and stakeholders to implement a new, multi-faceted drinking water strategy. It is designed to streamline decision making and expand protection to meet the needs of rural, urban, and other communities. This shift in approach seeks to address chemicals and contaminants by group, as opposed to working on a chemical-by-chemical basis;

fostering the development of new drinking water treatment technologies; using the authority of multiple statutes; and, encouraging collaboration with states and tribes to share more complete data from monitoring at public water systems.

Science-based standards are essential to protect our public water systems, groundwater and surface waterbodies, and recreational waters. These standards are the foundation for tools to safeguard human health such as advisories for beaches, fish consumption, and drinking water. Over the next five years, we will expand that science to improve our understanding of emerging potential waterborne threats to human health. We will also increase efforts to protect and improve beach water quality for our communities, including the development of new criteria and testing methods that provide quicker results and enable faster action on beach safety.

Protect and Restore Watersheds and Aquatic Ecosystems

People and the ecological integrity of aquatic systems rely on healthy watersheds. EPA employs a suite of programs to protect and improve water quality in the nation's watersheds—rivers, lakes, wetlands, and streams—as well as in our estuarine, coastal, and ocean waters. In partnership with states, territories, local governments, and tribes, EPA's core water programs help:

- ◆ Protect, restore, maintain, and improve water quality by financing wastewater treatment infrastructure;
- ◆ Conduct monitoring and assessment;
- ◆ Establish pollution reduction targets;
- ◆ Update water quality standards;
- ◆ Issue and enforce discharge permits; and,
- ◆ Implement programs to prevent or reduce nonpoint source pollution.

Over the next five years, EPA will continue efforts to restore waterbodies that do not meet water quality standards, preserve and protect high quality aquatic resources, and protect, restore, and improve wetland acreage and quality. The Agency will improve the way existing tools are used, explore how innovative tools can be applied, and enhance efforts and cross-media collaboration to protect and prevent water quality impairment in healthy watersheds.

In partnership with states, tribes, and local communities, EPA is developing a clean water strategy that will outline objectives for advancing the vision of the Clean Water Act and actions EPA will take to achieve those objectives. The Agency will explore ways to improve the condition of the urban waterways that may have been overlooked or under-represented in local environmental problem solving. We will also work more aggressively to reduce and control pollutants that are discharged from industrial, municipal, agricultural, and stormwater sources, and vessels, as well as to implement programs to prevent and reduce pollution that washes off the land during rain events. By promoting "green" infrastructure and

sustainable landscape management, EPA will help restore natural hydrologic systems and reduce pollution from stormwater events.⁶

EPA will also lead efforts to restore and protect aquatic ecosystems and wetlands, particularly in key geographic areas³, to address complex and cross-boundary challenges. EPA is heading up a multi-agency effort to restore and protect the Great Lakes, one of America's great waters, through the Great Lakes Restoration Initiative.⁷ In other parts of the nation, we will focus on nutrient pollution, which threatens the long-term health of important ecosystems such as the Chesapeake Bay. Further, given the environmental catastrophe resulting from the Deepwater Horizon BP oil spill, EPA will take necessary actions to support efforts to remove oil from and restore the Gulf of Mexico ecosystem. EPA will provide assistance to other federal, state, tribal, and local partners as they work to restore the water, wetlands, beaches, and surrounding communities of this vital area. We will also begin to identify actions to respond and adapt to the current and potential impacts of climate change on aquatic resources, including the current and potential impacts associated with warming temperatures, changes in rainfall amount and intensity, and sea level rise.⁸

Applied Research

EPA's research will help ensure that natural and engineered water systems have the capacity and resiliency to meet current and future water needs for the range of water-use and ecological requirements. These efforts will help position the Agency to meet the future needs in water resources management by:

- ◆ Evaluating individual and groups of contaminants for the protection of human health and the environment;
- ◆ Developing innovative tools, technologies, and strategies for managing water resources (including stormwater); and,
- ◆ Supporting a systems approach for protecting and restoring aquatic systems. The development of watershed-level data, tools, and approaches is crucial to our ability to provide adequate and safe water resources.

End Notes:

- 1 U.S. EPA, 2006. *Wadeable Streams Assessment: A Collaborative Survey of the Nation's Streams*. EPA 841-B-06-002. Available at <http://www.epa.gov/owow/streams/survey>. See also EPA, 2010. *National Lakes Assessment: A Collaborative Survey of the Nation's Lakes*. EPA 841-R-09-001. Available at http://www.epa.gov/lakessurvey/pdf/nla_chapter0.pdf.
- 2 Resilience is the ability of a system to absorb change and disturbance and still retain its fundamental function and/or structure.
- 3 Key geographic areas in the national water program include the Chesapeake Bay, the Great Lakes, the Gulf of Mexico, the U.S.-Mexico Border region, the Pacific Islands, the Long Island Sound, the South Florida Ecosystem, the Puget Sound Basin, the Columbia River Basin, and the San Francisco Bay Delta Estuary. For more information on these programs and their performance measures, see the annual National Water Program Guidance, available at <http://www.epa.gov/water/waterplan/index.html>.
- 4 EPA has developed a Priority Goal as part of the drinking water strategy efforts: Over the next two years, EPA will initiate review/revision of at least four drinking water standards to strengthen public health protection.
- 5 EPA has developed a Priority Goal to support the Chesapeake Bay Executive Order: Chesapeake Bay watershed states (including the District of Columbia) will develop and submit Phase I watershed implementation plans by the end of CY 2010 and Phase II plans by the end of CY 2011 in support of EPA's final Chesapeake Bay total maximum daily load (TMDL) and consistent with the expectations and schedule described in EPA's letters of November 4 and December 29, 2009, and June 11, 2010. For more information, see <http://executiveorder.chesapeakebay.net>.
- 6 For information on managing wet weather with green infrastructure, see http://cfpub.epa.gov/npdes/home.cfm?program_id=298.
- 7 Great Lakes Restoration Initiative, information available at <http://greatlakesrestoration.us/>.
- 8 United States Global Change Research Program, information available at <http://www.globalchange.gov/publications/reports/scientific-assessments/us-impacts>.

Goal 3: Cleaning Up Communities and Advancing Sustainable Development



Clean up communities, advance sustainable development, and protect disproportionately impacted low-income, minority, and tribal communities. Prevent releases of harmful substances and clean up and restore contaminated areas.

Uncontrolled releases of waste and hazardous substances can contaminate our drinking water and threaten healthy ecosystems. EPA leads efforts to preserve, restore, and protect these precious resources so they are available for both current and future generations. Over the next several years, our highest priorities under this goal are to prevent and reduce exposure to contaminants and accelerate the pace of cleanups across the country. EPA works collaboratively with international, state, and tribal partners to achieve these aims and with communities to ensure that they have a say in environmental decisions that affect them. Our efforts are guided by scientific data, research, and tools that alert us to emerging issues and inform decisions on managing materials and addressing contaminated properties.

Promote Sustainable and Livable Communities

EPA supports urban, suburban, and rural community goals of improving environmental, human health, and quality-of-life outcomes through partnerships that also promote economic opportunities, energy efficiency, and revitalized neighborhoods. Sustainable communities balance their economic and natural assets so that the diverse needs of local residents can be met now and in the future with limited environmental

Objectives:

- **Promote Sustainable and Livable Communities.** Support sustainable, resilient, and livable communities by working with local, state, tribal, and federal partners to promote smart growth, emergency preparedness and recovery planning, brownfield redevelopment, and the equitable distribution of environmental benefits.
- **Preserve Land.** Conserve resources and prevent land contamination by reducing waste generation, increasing recycling, and ensuring proper management of waste and petroleum products.
- **Restore Land.** Prepare for and respond to accidental or intentional releases of contaminants and clean up and restore polluted sites.
- **Strengthen Human Health and Environmental Protection in Indian Country.** Support federally-recognized tribes to build environmental management capacity, assess environmental conditions and measure results, and implement environmental programs in Indian country.

Strategic Measures associated with this Goal are on pages 49 through 51.

impacts. EPA accomplishes these outcomes by working with communities, other federal agencies, states, and national experts to develop and encourage development strategies that have better outcomes for air quality, water quality, and land preservation and revitalization.

Development and building construction practices may result in a broad range of impacts on human health and the environment. EPA is working with other federal, state, and local partners to develop best practices and guidance on aspects of sustainability related to how and where development occurs, including promoting smarter growth patterns and encouraging widespread adoption of green building technologies to support our strategic goals.

For example, EPA has joined with the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Transportation (DOT) to minimize the environmental impacts of development, which may include improved access to affordable housing, more transportation options, and lower transportation costs.¹ Through a set of guiding "livability" principles and a partnership agreement that will guide the agencies' efforts, this partnership is coordinating federal housing, transportation, water, and other infrastructure investments to protect the environment, promote equitable development, and help to address the challenges of climate change.

EPA is committed to ensuring environmental justice regardless of race, color, national origin, or income. Recognizing that minority and/or low-income communities may face disproportionate environmental risks, we work to protect these communities from adverse health and environmental effects and to ensure they are given the opportunity to participate meaningfully in environmental cleanup decisions.

EPA's brownfields program emphasizes environmental and human health protection in a manner that stimulates economic development and job creation by awarding competitive grants to assess and clean up brownfield properties and providing job training opportunities, particularly in underserved communities.² We also provide outreach and technical assistance to communities, including area-wide planning approaches, to identify viable end uses of a single, large property or groups of brownfield

properties; associated air and water infrastructure investments; and, environmental improvements in the surrounding area to revitalize the community. Under EPA's brownfields Priority Goal, area-wide planning will be conducted with the participation of other federal agencies, states, tribes, and local governments and communities to identify resources and approvals necessary to carry out actions identified in area-wide plans.³ This new approach differs from the way EPA brownfields resources have traditionally been used, recognizing that approaching the assessment and cleanup needs of a brownfields-impacted area can be more effective than focusing on individual sites in isolation of the adjacent or surrounding area.

Preserve Land

EPA and authorized states issue and enforce permits for the treatment, storage, or disposal of hazardous wastes to ensure that facilities subject to Resource Conservation and Recovery Act (RCRA) regulations operate safely. To prevent future environmental contamination and to protect the health of the estimated three million people living within a mile of hazardous waste management facilities⁴, EPA and its state partners continue their efforts to issue, update, or maintain RCRA permits for approximately 10,000 hazardous waste units (such as incinerators and landfills) at these facilities.

EPA is increasing emphasis on life-cycle based materials management. In order to respond to RCRA's mandate to conserve resources and energy, EPA will focus on strategies that emphasize sustainable materials management by identifying and reducing or minimizing waste at all life-cycle stages, from extraction of raw materials through end of life.⁵ Through this approach, EPA will focus on improving resource use through evaluating the environmental impacts of life-cycle stages of a material, product, or service, including identifying GHG benefits. EPA will develop national strategies that consider using less environmentally intensive and toxic materials and continue to promote downstream solutions, like reuse and recycling, to conserve our resources for future generations.

To reduce the risk posed by underground storage tanks (USTs) located at nearly a quarter of a million facilities throughout the country, EPA and states are working to ensure that every UST system is inspected

at least once every three years. As fuel types change, UST systems must be equipped to safely store the new fuels. EPA is working to ensure biofuels are stored in compatible UST systems.

Restore Land

Challenging and complex environmental problems, such as contaminated soil, sediment, and groundwater that can cause human health concerns, persist at many contaminated properties. EPA's Superfund, RCRA corrective action, leaking underground storage tank, and brownfields cleanup programs, and Toxic Substances Control Act (TSCA) cleanups of polychlorinated biphenyls (PCBs), reduce risks to human health and the environment by assessing and cleaning up these sites to maintain or put them back into productive use.

In an effort to improve the accountability, transparency, and effectiveness of EPA's cleanup programs, EPA has initiated the Integrated Cleanup Initiative (ICI), a multi-year effort to better use the most appropriate assessment and cleanup authorities to address a greater number of sites, accelerate cleanups, and put sites back into productive use while protecting human health and the environment. By using the relevant tools available in each of the cleanup programs, including enforcement, EPA will better leverage the resources available to address needs at individual sites. EPA will examine all aspects of the cleanup programs, identifying key process improvements and enhanced efficiencies. As part of the ICI, EPA will develop a new suite of performance measures that will support comprehensive management of the cleanup life cycle by addressing three critical points in the cleanup process—starting, advancing, and completing site cleanup.

EPA is continuing to improve its readiness to respond to releases of harmful substances, including oil spills,

by clarifying authorities, training personnel, and providing proper equipment. Given the Deepwater Horizon BP oil spill and the efforts to clean up and restore the Gulf of Mexico, EPA will review its current rules, guidelines and procedures on oil spills. EPA will ensure that it has the appropriate tools to prevent, prepare for, respond to, and recover from such incidents within its jurisdiction.⁶

National preparedness is essential to ensure that emergency responders are able to address multiple, large-scale emergencies, including those that may involve chemicals, oil, biological agents, radiation, or weapons of mass destruction. Consistent with the government-wide National Response Framework,

EPA prepares for the possibility of multiple, simultaneous, nationally significant incidents across several regions and provides guidance and technical assistance to state and local planning and response organizations.

EPA's hazardous waste programs are working to reduce the energy use and environmental footprint during the investigation and remediation of sites. As part of this effort, EPA's Superfund program will implement its green remediation strategy to reduce the energy, water, and materials used during site cleanups while ensuring that

protective remedies are implemented.⁷

EPA is also implementing its Community Engagement Initiative designed to enhance our involvement with local communities and stakeholders so that they may meaningfully participate in decisions on land cleanup, emergency response, and management of hazardous substances and waste. The goals of this initiative are to ensure transparent and accessible decision-making processes, to deliver information that communities can use to participate meaningfully, to improve EPA responsiveness to community perspectives, and to ensure timely cleanup decisions.



Strengthen Human Health and Environmental Protection in Indian Country

Under federal environmental statutes, EPA is responsible for protecting human health and the environment in Indian country. EPA's commitment to tribal environmental and human health protection, through the recognition of tribal sovereignty and self-determination, has been steadfast for over 25 years, as formally established in the Agency's 1984 Indian Policy.⁸ EPA works with over 500 federally-recognized tribes located across the United States to improve environmental and human health outcomes. Indian country totals more than 70 million acres with reservations ranging from less than 10 acres to more than 14 million acres. Difficult environmental and health challenges remain in many of these areas, including lack of access to safe drinking water, sanitation, adequate waste facilities, and other environmental safeguards taken for granted elsewhere.

In collaboration with our tribal partners and fulfilling our government-to-government responsibilities, EPA

will engage in a two-part strategy for strengthening human health and environmental protection in Indian country. First, EPA will provide the opportunity for federally-recognized tribes to create an effective and results-oriented environmental capacity-building presence. Second, EPA will ensure that its programs are implemented in Indian country either by EPA or through opportunities for implementation of environmental programs by tribes themselves.

Applied Research

In the area of cleaning up communities, research will allow EPA to identify and apply approaches that better inform and guide environmentally sustainable behavior, protect human health and ecosystems, and provide the products and services needed for mitigation, management, remediation, and long-term stewardship of contaminated sites. It will also provide state, tribal, and local decision makers with the knowledge needed to make smart, systems-based decisions that will inform a balanced approach to their cleanup and development needs.

End Notes:

- 1 Our Built and Natural Environments: A Technical Review of the Interactions between Land Use, Transportation, and Environmental Quality. Information available at <http://www.epa.gov/dced/built.htm>.
- 2 For more information about EPA's brownfields program, see <http://www.epa.gov/brownfields>.
- 3 EPA has developed a Priority Goal for brownfields: By 2012, EPA will have initiated 20 enhanced brownfields community level projects that will include a new area-wide planning effort to benefit under-served and economically disadvantaged communities. This will allow those communities to assess and address a single large or multiple brownfields sites within their boundaries, thereby advancing area-wide planning to enable redevelopment of brownfields properties on a broader scale. EPA will provide technical assistance, coordinate its enforcement, water, and air quality programs, and work with other federal agencies, states, tribes, and local governments to implement associated targeted environmental improvements identified in each community's area-wide plan.
- 4 This refers to the total estimated number of people that live within a mile of each of the RCRA hazardous waste facilities that have approved controls in place. Site-specific data can be queried from the Enforcement and Compliance History On-line database, which provides fast, integrated searches of EPA and state data for regulated facilities (see http://www.epa-otis.gov/echo/compliance_report_rcra.html). Population data included in the database is from the 2000 U.S. Census.
- 5 For more information on sustainable materials management, see *Sustainable Materials Management: The Road Ahead*. EPA 530R-09-009. Available at <http://www.epa.gov/osw/inforesources/pubs/vision2.pdf>
- 6 Several federal agencies have jurisdiction and authority for oil spill preparedness, response, and recovery in the U.S. in addition to EPA, including the Department of Transportation and the Coast Guard. EPA's efforts will focus on those aspects of the national oil spill program for which they have authority and responsibility, primarily the inland area and fixed facilities, as well as sharing best practices, pertinent research, and lessons learned with its federal partners.
- 7 More information about Superfund and green remediation at EPA is available at <http://www.epa.gov/superfund/greenremediation>.
- 8 The 1984 EPA Policy for the Administration of Environmental Programs on Indian Reservations is available at <http://www.epa.gov/tribal/pdf/indian-policy-84.pdf>.

Goal 4: Ensuring the Safety of Chemicals and Preventing Pollution



Reduce the risk and increase the safety of chemicals and prevent pollution at the source.

Chemicals are involved in the production of everything from our homes and cars to the cell phones we carry and the food we eat. Thousands of chemicals have become ubiquitous in our everyday lives and everyday products, as well as in our environment and our bodies. Chemicals are often released into the environment as a result of their manufacture, processing, use, and disposal. Research shows that children receive greater exposures to chemicals because they inhale or ingest more air, food, or water on a body-weight basis than adults do.¹ Other vulnerable groups, including low-income, minority, and indigenous populations, are also disproportionately impacted by, and thus particularly at risk from, chemicals.

In 2009, the Administration announced principles for modernizing the Toxic Substances Control Act (TSCA) to help inform efforts underway in Congress to reauthorize and significantly strengthen EPA's ability to assess the safety of industrial chemicals and adequately protect against unreasonable environmental or public health risks.² TSCA is outdated and should be revised to provide stronger and clearer authority for EPA to collect and act upon critical data regarding chemical risks. While TSCA does provide some authority to EPA to collect chemical information and mandate industry to conduct testing, there remain large, troubling gaps in the available data and state of knowledge on many widely used chemicals in commerce. EPA's authority to require development and submission of information and testing data is limited

Objectives:

- **Ensure Chemical Safety.** Reduce the risk of chemicals that enter our products, our environment, and our bodies.
- **Promote Pollution Prevention.** Conserve and protect natural resources by promoting pollution prevention and the adoption of other stewardship practices by companies, communities, governmental organizations, and individuals.

Strategic Measures associated with this Goal are on pages 52 through 53.

by legal hurdles and procedural requirements. As we look to the future, it is important to work together with Congress and stakeholders to modernize and strengthen the tools available under TSCA to prevent harmful chemicals from entering the marketplace and to increase confidence that those chemicals that remain are safe and do not endanger the environment or human health, especially for consumers, workers, and sensitive subpopulations like children.

The 1990 Pollution Prevention Act established preventing pollution before it is generated as national environmental policy. EPA is enhancing cross-cutting efforts to advance sustainable practices, safer chemicals, greener processes and practices, and safer products.

Ensure Chemical Safety

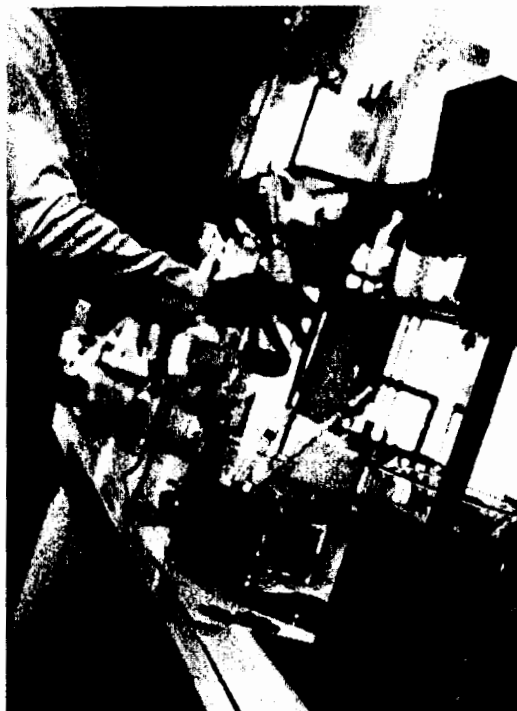
Chemical safety is one of EPA's highest priorities. EPA's approach to chemical risk management leverages expertise, information, and resources by collaborating with other countries, federal agencies, states, tribes, and the public to improve chemical safety.³ Children and other disproportionately exposed and affected groups, including low-income, minority, and indigenous populations, require more explicit consideration in EPA's chemical risk assessments and management actions, in accordance with the Executive Orders and guidance on children's health and environmental justice.⁴

EPA employs a variety of strategies under several statutes to ensure the safety of chemicals. These include:

- ◆ Controlling the risks of new chemicals before they are introduced or reintroduced into commerce;
- ◆ Evaluating chemicals already in use;
- ◆ Developing and implementing regulatory and other actions to eliminate or reduce identified chemical risks; and,
- ◆ Making public the data necessary to assess chemical safety to the extent allowed by law.^{5,6}

EPA has enhanced its work to ensure the safety of existing chemicals by taking action to restrict the production and use of chemicals posing unreasonable risks and better assess chemicals that may pose environmental or public health concerns. This will quicken the Agency's pace in characterizing the hazards posed by the highest volume chemicals, maximize use of existing TSCA authorities to increase the availability of chemical information, and accelerate work to identify safer alternatives.

Over the next five years, the Agency will implement risk management actions for chemicals that pose unreasonable risk to the environment or human health, carefully considering how the most vulnerable populations are potentially affected. EPA is strengthening rules to keep track of chemicals in commerce and adding chemicals and data requirements to better inform both EPA and the public about releases of toxic chemicals into the environment. EPA is



increasing its evaluation of claims of confidentiality in order to make all health and safety data for chemicals in commerce more publicly available to the extent allowed by law. EPA is also applying increasingly sophisticated scientific tools in reviewing hundreds of new chemical submissions each year under TSCA and increasing the efficiency and effectiveness of these reviews through the implementation of electronic submission and management systems.⁷

EPA will make major strides in guarding against exposure to chemicals that continue to pose potential risks to human health and the environment even after their hazards have been identified and certain uses have been phased out. For example, to continue to reduce childhood blood lead levels, EPA is working in partnership with states and tribes to certify hundreds of thousands of lead-paint professionals and expand public awareness of lead risks by implementing requirements for the use of lead-safe practices in renovation, remodeling, and painting activities in millions of older homes.^{8,9}

Over the next five years, EPA will manage a comprehensive pesticide risk reduction program through science-based registration and reevaluation processes, a worker safety program, certification and training

activities, and support for integrated pest management. EPA's current pesticide review processes focus on ensuring that pesticide registrations comply with the Endangered Species Act and achieve broader Agency objectives for water quality protection. The review processes will continue to place emphasis on the protection of potentially sensitive populations, such as children, by reducing exposures from pesticides used in and around homes, schools, and other public areas. EPA is reviewing its worker safety certification and training regulations to ensure that they are adequately protective. EPA's review processes ensure that pesticides can be used safely and are available for use to maintain a safe and affordable food supply, to address public health outbreaks, and to minimize property damage that can occur from insects and pests.¹⁰

EPA is also working to identify and address any potential risks of nanoscale materials during new and existing chemical review and on improving data collection efforts.¹¹ In addition, EPA is implementing a comprehensive testing program to screen for chemicals' potential to interact with the endocrine system.¹² More broadly, EPA is looking comprehensively across statutes to determine the best tools to apply to specific problems. For example, under a new drinking water strategy, the Agency is exploring how to use the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and TSCA to ensure that drinking water is protected from pesticides and industrial chemicals and that chemicals found in drinking water are being screened for endocrine disrupting properties using the authorities of the Safe Drinking Water Act (SDWA), the Federal Food, Drug, and Cosmetic Act (FFDCA), and FIFRA.

Prevent Pollution at the Source

The Pollution Prevention Act of 1990 established national pollution prevention policy. Time and experience have added to our understanding and appreciation of the value of preventing pollution before it occurs. Pollution prevention is central to all of EPA's sustainability strategies, and EPA will continue to incorporate pollution prevention principles into our policies, regulations, and actions. Pollution prevention, a long-standing priority for EPA, encourages companies, communities, governmental organizations, and individuals to prevent pollution and waste

before generation by implementing conservation techniques, promoting efficient re-use of materials, making production processes more sustainable, and promoting the use of safer substances. Together with new technology development, these pollution prevention practices result in significant co-benefits, such as the conservation of raw materials, water, and energy; reduction in the use of hazardous and high global-warming-potential materials; promotion of safer chemical substitutes; reduction of greenhouse gas emissions; and, the elimination of pollutant transfers across air, water, and land. EPA will collaborate with states and other partners to review pollution prevention results and identify enhanced pollution prevention strategies. This will also include continuing grants to states to support vital state pollution prevention infrastructures and fund technical assistance for local businesses.

EPA promotes "green" chemistry through the development and use of innovative chemical technologies. The Agency advances environmentally-conscious design, commercialization, and use of "green" engineering processes and sets standards for labeling programs that meet stringent criteria giving consumers assurance about the environmental integrity of the products they use. In addition, EPA helps agencies across the federal government comply with green purchasing requirements, thereby stimulating demand for "greener" products and services.¹³

Research

EPA chemicals research will continue to provide the scientific foundation for addressing the risks of chemical exposure in humans and wildlife. It will include enhanced chemical screening and testing approaches for priority-setting and context-relevant chemical assessment and management. Research will inform Agency actions and help local decision makers address contaminants of greatest concern to them, particularly with respect to air toxics and drinking water issues. EPA will continue assessments of high priority chemicals. EPA's research program also will promote discoveries and innovations in green chemistry and green engineering to help encourage use of safer chemicals in commerce.

End Notes:

- 1 Environmental Working Group, 2005. *Body Burden—The Pollution in Newborns*. Available at <http://www.ewg.org/reports/bodyburden2/execsumm.php>.
- 2 Essential Principles for Reform of Chemicals Management Legislation. Available at <http://www.epa.gov/oppt/existingchemicals/pubs/principles.html>.
- 3 "EPA Increases Transparency of Chemical Risk Information: Action part of continued comprehensive reform of toxic substances laws." EPA News Release, January 21, 2010. Available at <http://yosemite.epa.gov/opa/admpress.nsf/bd4379a92ceceac8525735900400c27631cf22eb540c4db852576b2004eca47!OpenDocument>.
- 4 Executive Orders include: E.O. 13045 (Protection of Children from Environmental Health Risks and Safety Risks) and E.O. 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations). Relevant guidance documents can be found on EPA's environmental justice and children's health websites, <http://www.epa.gov/compliance/environmentaljustice/index.html> and <http://yosemite.epa.gov/ochp/ochpweb.nsf/content/homepage.htm>.
- 5 Collecting and Assessing Information on Chemicals. Available at <http://www.epa.gov/oppt/existingchemicals/pubs/collectinfo.html>.
- 6 Managing Chemical Risk. Available at <http://www.epa.gov/oppt/existingchemicals/pubs/managechemrisk.html>.
- 7 Overview of EPA New Chemicals Program. Available at <http://www.epa.gov/oppt/newchems>.
- 8 Information about childhood lead poisoning is available at <http://www.leadfreekids.org>
- 9 EPA Lead-Safe Certification Program. Available at <http://www.epa.gov/lead/pubs/toolkits.htm>
- 10 EPA pesticides program information is available at <http://www.epa.gov/pesticides>.
- 11 Information about nanotechnology is available at <http://www.epa.gov/ncer/nano/factsheet/>.
- 12 Information about the EPA Endocrine Disruptor Screening Program is available at <http://www.epa.gov/scipoly/oscpendo/index.htm>.
- 13 Information about the EPA Environmentally Preferable Purchasing Program is available at <http://www.epa.gov/epp/pubs/about/about.htm>.

Goal 5: Enforcing Environmental Laws



Protect human health and the environment through vigorous and targeted civil and criminal enforcement. Assure compliance with environmental laws.

Vigorous enforcement supports EPA's ambitious goals to protect human health and the environment. Achieving these goals for safe drinking water, lakes and streams that are fishable and swimmable, clean air to breathe, and communities and neighborhoods that are free from chemical contamination requires both new strategies and compliance with the rules we already have. By addressing noncompliance swiftly and effectively, EPA's civil and criminal enforcement cases directly reduce pollution and risk, and deter others from violating the law.

EPA enforcement takes aggressive action against pollution problems that make a difference in communities. Through vigorous civil and criminal enforcement and other compliance tools, EPA targets the most serious water, air, and chemical hazards, and advances environmental justice by protecting low-income, minority, and tribal communities that are disproportionately impacted by such hazards.

Vigorous civil and criminal enforcement plays a central role in achieving the bold goals below that the Administrator has set for EPA:

- ◆ **Taking Action on Climate Change and Improving Air Quality:** EPA will take effective actions to reduce air pollution from the largest sources, including coal-fired power plants and the cement, acid, and glass sectors, to improve air quality. Enforcement to cut toxic air pollution in communities improves the health of

Objective:

- **Enforce Environmental Laws.** Pursue vigorous civil and criminal enforcement that targets the most serious water, air, and chemical hazards in communities. Assure strong, consistent, and effective enforcement of federal environmental laws nationwide.

Strategic Measures associated with this Goal are on pages 54 through 55.

communities, particularly low-income, minority, and tribal communities that are disproportionately impacted by pollution. Enforcement supports reductions in greenhouse gases (GHG) through enforcement settlements that encourage GHG emission reductions. EPA will also work to ensure compliance with new standards and reporting requirements for GHG emissions as they are developed.

- ◆ **Protecting America's Waters:** EPA is re-vamping enforcement and working with state permitting authorities under the Clean Water Act Action Plan¹ to make progress on the most important water pollution problems. This work includes, as a Priority Goal, increasing enforcement actions in waters that do not meet water quality standards. In addition the Agency will

continue to focus on getting raw sewage out of water, cutting pollution from animal waste, and reducing pollution from stormwater runoff.² Enforcement will help to clean up great waters like the Chesapeake Bay and will assist in revitalizing urban communities by protecting urban waters. Enforcement will also support the goal of assuring safe drinking water for all communities, including in Indian country.

- ◆ **Cleaning Up Communities and Advancing Sustainable Development:** EPA protects communities by requiring responsible parties to conduct cleanups, saving federal dollars for sites where there are no other alternatives. Aggressively pursuing these parties to clean up sites ultimately reduces direct human exposures to hazardous pollutants and contaminants, provides for long-term human health protection, and makes contaminated properties available for reuse.
- ◆ **Ensuring the Safety of Chemicals and Preventing Pollution:** Reforming chemical management enforcement and reducing exposure to pesticides will help protect human health. Enforcement reduces direct human exposures to toxic chemicals and pesticides and supports long-term human health protection.

Criminal enforcement underlines our commitment to pursuing the most serious pollution violations. EPA's criminal enforcement program will focus on cases

across all media that involve serious harm or injury; hazardous or toxic releases; ongoing, repetitive, or multiple releases; serious documented exposure to pollutants; and, violators with significant repeat or chronic noncompliance or prior criminal conviction.

EPA shares accountability for environmental and human health protection with states and tribes. We work together to target the most important pollution violations and ensure that companies that do the right thing and are responsible neighbors are not put at a competitive disadvantage. EPA also has a responsibility to oversee state and tribal implementation of federal laws to ensure that the same level of protection for the environment and the public applies across the country.

Enforcement can help to promote environmental justice by targeting pollution problems that disproportionately impact low-income, minority, and tribal communities. Ensuring compliance with environmental laws is particularly important in communities that are exposed to greater environmental health risks. EPA fosters community involvement by making information about compliance and government action available to the public.³

Increased transparency is an effective tool for improving compliance. By making information on violations both available and understandable, EPA empowers citizens to demand better compliance.

End Notes:

- 1 An overview of the Clean Water Action Plan is available at <http://www.epa.gov/oecaerth/civil/cwa/cwaenplan.html>.
- 2 EPA has developed a Priority Goal for water enforcement: EPA will increase pollutant reducing enforcement actions in waters that do not meet water quality standards, and post results and analysis on the web.
- 3 Information about compliance and government action is available at <http://www.epa.gov/compliance/index.html>.

External Factors and Emerging Issues

EPA sets goals and objectives in carrying out its mission to protect human health and the environment, but there are always factors outside of EPA's control that affect our ability to do our work. For example, the changing economic, legal, and regulatory landscape often affects the Agency's resources, anticipated activities, and direction. As part of a dynamic global community addressing technological changes, EPA is confronted with challenges, emerging issues, and opportunities every day. An oil spill, flood, hurricane, tragedy, or other disasters can swiftly divert the Agency's anticipated focus. Other issues, such as climate change and population growth, can create long-term challenges that run deep and across many EPA programs. Additionally, EPA accomplishes much of its work through partnerships, particularly with states and tribes, and any budget shortfalls they experience can affect our ability to achieve our goals.

External factors and emerging issues present both opportunities and challenges to EPA. Specifically, over the next five years, EPA will be actively engaged in a variety of areas:

- ◆ **Climate Change:** Energy and transportation policies continue to evolve and influence the Agency's ability to improve air quality and address climate change issues. Impacts of climate change, such as changes in rainfall amount and intensity, shifting weather and seasonal patterns, and increases in flood plain elevations and sea levels, will also affect progress towards many of the goals. Yet other developments may have positive environmental impacts. The growth of alternative energy sources and increased investments in energy efficiency can reduce greenhouse gas emissions and improve local air quality.
- ◆ **American Reinvestment and Recovery Act (ARRA):** We expect the long-term impact of ARRA¹ funding will advance assessment and cleanup activities at former industrial sites, help address local water infrastructure needs, and spur technological innovation, promoting energy efficiency, alternative energy supplies, and new technologies and innovation in water infrastructure.
- ◆ **Water Quality:** Water quality programs face challenges such as increases in nutrient loadings and stormwater runoff, aging infrastructure, and population growth (which can increase water consumption and place additional stress on aging water infrastructures). The Agency needs to examine carefully the potential impacts of and solutions to these issues, including effects on water quality and quantity that could result in the long term from climate change.
- ◆ **Waste Management:** Our necessary reliance on private parties, state and tribal partners, the use of new and innovative control technologies, and the involvement of other federal agencies in remediation efforts can all affect our efforts to remediate contaminated sites and prevent waste. New waste streams are continually emerging, such as those from mining of rare earth elements which are used in clean-energy technologies, potentially presenting increased opportunities for recycling of valuable materials and challenges for safe disposal of new waste streams.
- ◆ **Protective Site Cleanup:** Hazardous waste programs are intended to provide permanent solutions to contaminated media at sites or facilities to the extent practicable. Complications can arise when new scientific information concerning contaminants at a site suggests that a risk assessment that was protective when a remedy was selected is no longer protective given the contaminant levels remaining at a site and their potential exposure pathways and uses. As appropriate, EPA must incorporate emerging science into decision making to maintain its commitment to provide permanent solutions.
- ◆ **Chemical Safety:** Legislative reforms to the Toxic Substances Control Act in line with the Administration's principles would provide EPA

with the ability to obtain and publicly disclose critical information on the risks posed by chemicals. This will strengthen our chemical risk assessment and management programs, and significantly improve federal and state ability to manage and mitigate risk from industrial chemicals.

- ◆ **Communities:** Citizen science—individual citizens and community groups that monitor and document environmental trends—can expand the reach of EPA's own field presence. Communities have access to more environmental, economic, and social data than ever before that can be synthesized and analyzed through varying tools and technologies. With this information, communities can make smarter management decisions which may lead to increasingly effective stewardship. While citizen science requires expert support to ensure the quality of environmental data and to facilitate knowledge-building, with the right tools, communities can spur local industry and others to

do a better job of complying with environmental laws and regulations.

The world in which EPA works continues to change rapidly. The recent oil spill in the Gulf of Mexico is a catastrophic environmental problem that will have significant consequences and require innovative technological and other solutions. A wide range of new technologies are on the horizon in areas as diverse as nanotechnology catalysts and nanosolar cells, nanomaterials for rehabilitation of water pipes, advanced battery technologies, accurate and inexpensive portable and real-time sensors, and the application of synthetic biology to algal biofuel production. Emerging technologies may present new environmental problems that need to be understood and addressed, and at the same time will create opportunities for building an advanced technological infrastructure. EPA will continue to do its best to anticipate change and be prepared to address the inevitable challenges and opportunities that we will face in the future.

End Note:

- 1 Information about the American Reinvestment and Recovery Act is available at <http://www.recovery.gov>.

Summary of Program Evaluation

The Administration has emphasized the importance of using program evaluation to provide the evidence needed to demonstrate that our programs are meeting their intended outcomes. By assessing how well a program is working and *why*, program evaluation can help EPA identify where our activities have the greatest impact on protecting human health and the environment, provide the road map needed to replicate successes, and conversely, identify areas needing improvement. This is particularly important as EPA meets its obligations for transparency and accountability.

For the *Strategic Plan*, we look to the results of past evaluations to inform our program strategies for the next five years. Evaluation results may affirm existing strategies or identify opportunities for improvement and may lead to changes in policy, resource decisions, and program implementation. For example, the Government Accountability Office's 2007 evaluation of the Toxic Substances Control Act helped frame Administrator Jackson's September 2009 announcement of an integrated approach to chemical management and a set of principles for reform. Additionally, EPA commissioned the National Academy of Public Administration (NAPA) to conduct an independent evaluation of the Community Action for a Renewed Environment (CARE) Demonstration Program, a competitive

grant program that offers an innovative way for a community to organize and take action to reduce toxic pollution in its local environment.¹ Recommendations and feedback from this evaluation have informed EPA's strategic changes and investment decisions in the program.

Our plans for future program evaluations include cyclical reviews of our research and development programs. These are geared to ensure that our research priorities meet our future challenges. Examples of other future evaluations include assessing the impact of our "green" chemical labeling program on consumer purchasing habits and measuring the success of less resource-intensive remediation strategies to clean up hazardous waste sites across the country.

While EPA conducts a variety of design, process, and outcome evaluations, under the Administration's government-wide evaluation initiative, EPA is working to evolve and expand our portfolio to conduct more rigorous impact evaluations that will enhance program effectiveness. Recently completed process and program evaluations from EPA and external organizations that informed the strategies in the *Strategic Plan* and a preliminary list of future program evaluations EPA plans to conduct are described in more detail at the *EPA Strategic Plan* website.²

End Notes:

- 1 National Academy of Public Administration, 2009. *Putting Community First: A Promising Approach to Federal Collaboration for Environmental Improvement*. Available at http://www.napawash.org/pc_management_studies/CARE/5-21-09_Final_Evaluation_Report.pdf.
- 2 EPA *Strategic Plan* website: <http://www.epa.gov/ocfo/plan/plan.htm>.

Cross-Cutting Fundamental Strategies

Introduction

Since EPA's inception over 40 years ago, we have focused not only on our mission to achieve environmental and human health results but also on how we work to accomplish those results. Achievement of each of these goals and objectives is shared across EPA. Through this *Plan*, EPA is placing an increased focus on how we work to achieve those results.

We have developed a set of cross-cutting strategies that stem from the Administrator's priorities and are designed to fundamentally change how we work, both internally and externally, to achieve the mission outcomes articulated under our five strategic goals. This *Plan* describes the vision and operating principles for each of the cross-cutting strategies:

- ◆ Expanding the conversation on environmentalism;
- ◆ Working for environmental justice and children's health;
- ◆ Advancing science, research, and technological innovation;
- ◆ Strengthening state, tribal, and international partnerships; and,
- ◆ Strengthening EPA's workforce and capabilities.

The Agency will develop annual action plans with commitments that align with existing planning, budget, and accountability processes. In implementing these strategies through annual action plans, we

are embarking on a deliberate, focused effort to take tangible, measurable actions to transform the way we deliver environmental and human health protection.

Expanding the Conversation on Environmentalism



Engage and empower communities and partners, including those who have been historically under-represented, in order to support and advance environmental protection and human health nationwide.

We have begun a new era of outreach at EPA and seek to include a broader range of people and communities in our work and expand our engagement with communities historically under-represented in our decision-making processes. We will build stronger working relationships throughout the country, particularly with tribes, communities of color, economically-distressed cities and towns, young people, and others.

To accomplish these goals, we will:

- ◆ Call for innovation and bold thinking and ask all employees to bring their creativity and talents to their everyday work to enhance outreach and transparency in all our programs.
- ◆ Ensure that our science is explained clearly and accessible to all communities, communicating and educating in plain language the complexities of environmental, health, policy, and regulatory issues.
- ◆ Educate and empower individuals, communities, and Agency partners in decision making through public access to environmental information and data.
- ◆ Ensure that the Agency's regulations, policies, budget, and decision-making processes are transparent and accessible through increased access to environmental data sources, community right-to-know tools, and direct stakeholder engagement.
- ◆ Address barriers to improve engagement with historically under-represented sectors of the nation.
- ◆ Use traditional and new media to inform and educate the public about Agency activities and provide opportunities for community feedback.
- ◆ Encourage citizens to understand the complexities and impacts of environmental issues and environmental stewardship, and provide avenues and tools that enhance their ability to participate in processes that could affect them.

Working for Environmental Justice and Children's Health



Work to reduce and prevent harmful exposures and health risks to children and underserved, disproportionately impacted low-income, minority, and tribal communities, and support community efforts to build healthy, sustainable green neighborhoods.

Advancing environmental justice and protecting children's health must be driving forces in our decisions across all EPA programs. The underlying principles for this commitment are reducing exposures for those at greatest risk and ensuring that environmental justice and children's health protection are integral to all Agency activities. All populations—including minority, low-income, and indigenous populations—that are vulnerable to environmental pollution are at risk of having poor health outcomes. These vulnerabilities may arise because of higher exposures to pollution in places where they work, live, and play, and/or diminished abilities to withstand, cope with, or recover from exposure to environmental pollution.¹ Children are often most acutely affected by environmental stressors. Research has demonstrated that prenatal and early life exposures to environmental hazards can cause lifelong diseases, medical conditions, and disabilities.²

Environmental justice and children's health protection will be achieved when all Americans, regardless of age, race, economic status, or ethnicity, have access to clean water, clean air, and healthy communities. To accomplish this, EPA will use a variety of approaches, including regulation, enforcement, research, outreach, community-based programs, and partnerships to protect children and disproportionately impacted,

overburdened populations from environmental and human health hazards. Our success in advancing environmental justice and children's health protection will result from fully incorporating these priorities into all of our activities across each of the strategic goals of the Agency. We anticipate that our leadership in advancing environmental justice and children's health protection will inspire and engage a broad spectrum of partners in the public and private sector to do the same.

Specifically, EPA will:

- ◆ In our regulatory capacity, implement the nation's environmental laws using the best science and environmental monitoring data to address the potential for adverse health effects from environmental factors in disproportionately impacted, overburdened populations and vulnerable age groups. EPA programs will incorporate environmental justice and children's health considerations at each stage of the Agency's regulation development process and in implementation of environmental regulations.
- ◆ Develop and use environmental and human health indicators to measure improvements in environmental conditions and health in disproportionately impacted communities and among vulnerable age groups.

- ◆ In our work on safe management of pesticides and industrial chemicals, take into account disproportionately impacted, overburdened populations, and women of child-bearing age, infants, children, and adolescents, and encourage the use of "green chemistry" to spur the development of safer chemicals and production processes.
- ◆ Apply the best available scientific methods to assess the potential for disproportionate exposures and health impacts resulting from environmental hazards on minority, low-income, and indigenous populations, women of child-bearing age, infants, children, and adolescents, to support EPA decision making, and to develop the tools to assess risk from multiple stressors.
- ◆ Engage communities in our work to protect human health and the environment. EPA will align multiple community-based programs to provide funding and technical assistance to communities to build capacity to address critical issues affecting children's health and disproportionately impacted populations.
- ◆ Work with other federal agencies³ to engage communities and coordinate funding and technical support for efforts to build healthy, sustainable, and green neighborhoods, and work with residents to promote equitable development.

End Notes:

- 1 See the following sources:

World Health Organization, 2006. *Principles for Evaluating Health Risks in Children*. Environmental Health Criteria, 237. Available at http://whqlibdoc.who.int/publications/2006/924157237X_eng.pdf;

EPA, 2003. Framework for Cumulative Risk Assessment. Risk Assessment Forum. EPA/630/P-02/001F. Available at <http://cfpub.epa.gov/ncea/cfm/recorddisplay.cfm?deid=54944>; and,

EPA, 2004. *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts*. Available at <http://www.epa.gov/environmentaljustice/resources/publications/nejac/nejac-cum-risk-rpt-122104.pdf>.

- 2 National Institutes of Health, National Institute of Environmental Health Sciences, 2008. *Linking Early Environmental Exposures to Adult Diseases*. Available at <http://www.niehs.nih.gov/health/docs/linking-exposures.pdf>.
- 3 Including the Departments of Housing Urban and Development, Health and Human Services, Energy, Agriculture, Transportation, Interior, Labor, and Education.

Advancing Science, Research, and Technological Innovation



Advance a rigorous basic and applied science research and development agenda that informs, enables, and empowers and delivers innovative and sustainable solutions to environmental problems. Provide relevant and robust scientific data and findings to support the Agency's policy and decision-making needs.

The major challenges we face to human health and the environment are not incremental problems, and they do not lend themselves to incremental solutions. EPA will promote innovative solutions to environmental problems that reduce or eliminate pollution while avoiding unintended and/or unwanted consequences, addressing pollutants, chemicals, and materials throughout their life cycle from raw material to final disposition.

The Office of Management and Budget (OMB) has reiterated the critical and timely need for innovation in science and technology, building on the President's *Strategy for American Innovation*.^{1,2} OMB identifies priorities that include new approaches to multi-disciplinary research, new approaches for accelerating technology commercialization and innovation, interagency and international collaborations, and better communication with the public on science, technology, and innovation.

Environmental sustainability is a guidepost for science, research, and technological innovation at EPA.³ Sustainability is a broader approach to environmental protection that considers trade-offs in production processes and materials use. Sustainable solutions prevent chemicals from entering the environment or eliminate, rather than simply reduce, the production of waste through better materials management.

EPA must help drive high quality research, sound science, and technology innovation to sustainably address air quality, climate change, water quality and quantity, unreasonable risks from toxic chemicals, ecosystem degradation, and other environmental issues. EPA will inform, enable, and stimulate the development of sustainable solutions to current and future challenges because sustainable and innovative environmental solutions can also be more economically efficient.

EPA science and research must always inform the decisions that are essential to the protection of human health and the environment and empower the broader community that supports our mission. To address challenging environmental problems in this manner, EPA research will:

- ◆ **Provide timely, responsive, and relevant solutions:** EPA's science, research, and technological innovation depend on partnerships and a continuing dialogue with internal and external partners and stakeholders to ensure that EPA efforts focus on the highest priority problems faced by the Agency and the nation. Building on traditional collaboration efforts, EPA will also leverage the scientific discoveries of others to achieve even more responsive solutions to the environmental problems that our communities face.

- ◆ **Transcend traditional scientific disciplines:** A broad perspective—one that integrates knowledge from a wide variety of sources—is key to developing sustainable solutions. In all aspects of our work, from problem identification, to research design and conduct, to implementation and adoption of solutions, EPA must rely on diverse disciplines. Environmental problems often raise complex scientific and technological issues that require non-traditional approaches. If EPA is to advance progress on these challenging problems, we must rely on integrated, trans-disciplinary research that complements traditional, single-discipline approaches.
- ◆ **Communicate widely and openly:** Great work, done invisibly, cannot have an impact. To maximize the impact and utility of our research, EPA will communicate the design, definition, conduct, transfer, and implementation of the work we do. We will translate our science so that it is accessible, understandable, relevant to, and used by stakeholders and the general public. EPA must document our successes to maximize the value of our scientific work.
- ◆ **Catalyze sustainable innovation:** EPA's efforts alone will not be enough to address the environmental challenges our nation faces. As we develop and promote these technology innovations, EPA must account for life-cycle perspectives and support technologies that fully consider environmental and social impacts, and collaborate with partners in academia, government, and industry to assess impacts and promote effective product stewardship. EPA must also guide sustainable solutions on the path from conceptual and proof-of-concept stages, through research and development, to commercialization and deployment. EPA must understand and engage the marketplace to ensure the effectiveness of these solutions. Additionally, EPA must be receptive to external innovations in science, research, and technology that can enhance EPA's effectiveness in fulfilling our mission.

End Notes:

- 1 OMB Memorandum M-10-30, July 21, 2010. "Science and Technology Priorities for the FY2012 Budget." Available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2010/m10-30.pdf>.
- 2 Press Release from the White House Office of the Press Secretary, September 21, 2009. "President Obama Lays Out Strategy for American Innovation." Available at http://www.whitehouse.gov/the_press_office/President-Obama-Lays-Out-Strategy-for-American-Innovation/.
- 3 Information on the EPA Sustainability Program is available at <http://www.epa.gov/sustainability/>.

Strengthening State, Tribal, and International Partnerships



Deliver on our commitment to a clean and healthy environment through consultation and shared accountability with states, tribes, and the global community for addressing the highest priority problems.

EPA will strengthen its state, tribal, and international partnerships to achieve our mutual environmental and human health goals. As we work together, our relationships must continue to be based on integrity, trust, and shared accountability to make the most effective use of our respective bodies of knowledge, our existing authorities, our resources, and our talents.

Successful partnerships will be based on four working principles: consultation, collaboration, cooperation, and accountability. By *consulting*, we will engage our partners in a timely fashion as we consider approaches to our environmental work so that each partner can make an early and meaningful

contribution toward the final result. By *collaborating*, we will not only share information, but we will actively work together with our partners to use all available resources to reach our environmental and human health goals. As our work progresses, we will *cooperate*, viewing each other with respect as allies who must work successfully together if our goals are to be achieved. Through shared *accountability*, we will ensure that environmental benefits are consistently delivered nationwide. In carrying out these responsibilities, EPA will ensure through oversight that state and tribal implementation of federal laws achieves a consistent level of protection for the environment and human health.

With States

Under our federal environmental laws, EPA and the states share responsibility for protecting human health and the environment. With this relationship as the cornerstone of the nation's environmental protection system, EPA will:

- ◆ Improve implementation and consistent delivery of national environmental programs through closer consultation and transparency.
- ◆ Work with states to seek efficient use of resources through work-sharing, joint planning using data analysis and targeting to address priorities, and other approaches.
- ◆ Play a stronger management role to facilitate the exchange of data with states to improve program effectiveness and efficiency.
- ◆ Consult with state and local governments on a routine basis to ensure that the development and implementation of rules is consistent with EPA's *Action Development Process: Guidance on Executive Order 13132 (Federalism)*, which recognizes the division of governmental responsibilities between the federal government and the states.

- ◆ Strengthen state-EPA shared accountability by focusing oversight on the most significant and pressing state program performance challenges, using data and analysis to speed program improvements.
- ◆ Ensure a level playing field across states to improve compliance and address the most serious violations.

With Tribes

The relationship between the United States Government and federally-recognized tribes is unique and has developed throughout the course of the nation's history. In strengthening this relationship, EPA will:

- ◆ Focus on increasing tribal capacity to establish and implement environmental programs while ensuring that our national programs are as effective in Indian country as they are throughout the rest of the nation.
- ◆ Enhance our effort as we work with tribes on a government-to-government basis, based upon the Constitution, treaties, laws, executive orders, and a long history of Supreme Court rulings.
- ◆ Strengthen our cross-cultural sensitivity with tribes, recognizing that tribes have cultural, jurisdictional, and legal features that must be considered when coordinating and implementing environmental programs in Indian country.

With Other Countries

To achieve our domestic environmental and human health goals, international partnerships are essential. Pollution is often carried by winds and water across national boundaries, posing risks many hundreds and thousands of miles away. Many concerns, like climate change, are universal. In the international arena, EPA will:

- ◆ Expand our partnership efforts in multilateral forums and in key bilateral relationships.
- ◆ Enhance existing and nurture new international partnerships to promote a new era of global environmental stewardship based on common interests, shared values, and mutual respect.

Strengthening EPA's Workforce and Capabilities



Continuously improve EPA's internal management, encourage innovation and creativity in all aspects of our work, and ensure that EPA is an excellent workplace that attracts and retains a topnotch, diverse workforce, positioned to meet and address the environmental challenges of the 21st century.

Achieving positive environmental and human health outcomes through cleaner and safer air, water, and land, and through protection of our natural resources is the focal point of all our work at EPA. This compelling mission attracts workers eager to make a difference and drives employees across the Agency to work together. EPA fully supports the Administration's efforts to reform the federal government's hiring system to ensure highly qualified individuals are available to strengthen EPA's workforce. EPA believes these reforms will improve the Agency's ability to protect human health and the environment more effectively and efficiently.

EPA is a complex organization. This is both an asset and a challenge. To achieve its mission, EPA is continuously building and nurturing a skilled workforce, finding new ways to use the power of information, working together through enhanced communication, and demanding transparency and accountability at all levels. With innovative and creative management and a talented, diverse, and highly motivated workforce, EPA will be positioned to meet head-on the complex environmental challenges of the present and future.

To achieve this goal, EPA will:

- ◆ Recruit, develop, and retain a diverse and creative workforce, equipped with the technical skill and knowledge needed to accomplish the Agency's mission and to meet evolving environmental challenges.
- ◆ Cultivate a workplace that values a high quality work life, provides employee-friendly policies and facilities, and invests in the information infrastructure, technology, and security essential to support a mobile workforce.
- ◆ Practice outstanding resource stewardship to ensure that all Agency programs operate with fiscal responsibility and management integrity, are efficiently and consistently delivered nationwide, and demonstrate results.
- ◆ Take advantage of existing and emerging tools to improve and enhance communication, transparency, and accountability.
- ◆ Integrate energy efficiency and environmental considerations into our work practices as core components of Agency business models and operations.
- ◆ Improve the effectiveness and efficiency of the Agency's acquisition function by strengthening requirements development, contract management, and internal review practices; maximizing the use of competition in contracting, reducing high-risk contracts; improving how contracts are structured; building the skills of the acquisition workforce; and improving management of the EPA acquisition workforce.

Strategic Measurement Framework



Introduction

The *Strategic Plan* provides the foundation for EPA's performance management system—planning, budgeting, performance measurement, and accountability. The *Plan* contains EPA's strategic measurement framework of long-term goals, objectives, and strategic measures, which describe the measurable human health and environmental results the Agency is working to achieve over the next five years.

To achieve the long-term goals, objectives, and strategic measures set out in this *Plan*, EPA designs annual performance measures which are presented in EPA's *Annual Performance Plans and Budgets*. The Agency reports on our performance against these annual measures in *Annual Performance Reports*, and uses this performance information to establish priorities and develop future budget submissions. The Agency also uses this performance data to evaluate our progress and develop future *Strategic Plans*.

EPA's strategic planning and decision-making benefits from other sources of information as well, including program evaluations and environmental indicators. A number of the strategic measures in this *Strategic Plan* are based on indicators contained in EPA's 2008 *Report on the Environment* (ROE). The ROE identifies a set of peer-reviewed human health and environmental indicators that allows EPA to track trends in environmental conditions and environmental influences on human health. This information also helps us better articulate and improve the strategic measurement framework in EPA's *Strategic Plan*.

The Agency continues to look for new data and information sources to better characterize the environmental conditions targeted by our programs and improve our understanding of the integrated and complex relationships involved in maintaining human health and environmental well-being.

Significant Changes in the Strategic Measurement Framework

We have made significant changes to our measurement framework in this *Plan*. We revised our five strategic goals to sharpen and align them with the Administrator's priorities, including a heightened focus on cross-program activities addressing climate change adaptation and mitigation, sustainable communities, and chemical safety. We revised our suite of strategic measures—the measurable environmental and human health outcomes we are working to achieve—in several significant ways. First, we significantly

reduced the number of strategic measures by focusing on the key outcomes most important to advance the Administrator's priorities and the Agency's mission. The goal was to create a *smaller, more strategic, and more meaningful set that Agency leadership uses to manage*. Second, for consistency purposes, we placed all the quantified measurable results at the lowest level in the framework—the strategic measures. Third, we updated the strategic measures to reflect targets and baselines appropriate for the FY 2011–2015 time

horizon. Lastly, we removed the separate objectives and strategic measures for the Agency's research and development program from the *Plan* and integrated this work into the programmatic objectives; this critical work supports many of our strategic measures and will continue to be tracked through annual performance measures.

Some of the new strategic directions in our measures are reflected in this *Plan*, but efforts will continue over the next several years to make further revisions in key areas. Highlights of the new measures and continuing efforts are described below.

- ◆ **Deepwater Horizon BP Oil Spill in the Gulf of Mexico:** While we are still assessing the unprecedented environmental damage from the Deepwater Horizon BP oil spill and the Agency actions necessary to address the damage and prevent similar disasters in the future, we have added a new strategic measure as a preliminary step to reflect the challenge ahead. This measure addresses efforts to conduct a thorough review of our oil spill program regulations to ensure that these regulations are up to date and effective. The magnitude of the impacts has yet to be fully understood and assessed, so further adjustments may be needed in the future. In addition, EPA is working to develop a water-oriented measure in response to the Deepwater Horizon BP oil spill in the Gulf of Mexico. The measure will reflect efforts to assist in the restoration of the Gulf of Mexico ecosystem, including water, wetlands, beaches, and surrounding communities. Currently, EPA has two program-specific water measures, one that relates to Gulf of Mexico hypoxia and the other to regional coastal aquatic ecosystem health that will be reassessed for impact from the oil spill.
- ◆ **Climate Change Adaptation and Mitigation:** The ability of communities to respond to changes in climate over the next decade is critical to achieving many of the environmental outcomes in this *Strategic Plan*. We have incorporated consideration of climate change across all five goals of the *Strategic Plan* and will continue to collaborate with stakeholders, the US Global Change Research Program, the Interagency Taskforce on Climate Change Adaptation, and others. We have added three strategic measures for climate change adaptation under Goal 1. In addition, we have expanded the existing greenhouse gas (GHG) mitigation measure to capture reductions Agency-wide and added a measure to reflect expected GHG reductions resulting from the light-duty vehicle greenhouse gas rule.
- ◆ **Land Cleanup:** EPA has begun an Integrated Cleanup Initiative, a multi-year effort to better use assessment and cleanup authorities to address a greater number of sites, accelerate cleanups, and put those sites back into productive use while protecting human health and the environment. The Agency is working to develop a suite of measures that will allow for comprehensive management across cleanup programs and across the cleanup life cycle, with a focus on three critical points in the cleanup process—starting, advancing, and completing site cleanups. As a first step in this process, we are shifting our definition of success at a Superfund site from where the construction of a remedy is complete, to when the site is actually "ready for anticipated use" in a community. In addition, a new site assessment measure has been developed that fully captures the entire assessment workload at the beginning of the Superfund process, a measure which also may be expanded to include progress of other cleanup programs in the future.¹
- ◆ **Chemical Safety:** One of EPA's highest priorities over the next five years is to ensure the safety of chemicals and pesticides used in this country. As part of this effort, EPA is taking a more integrated approach to managing chemical and pesticide risk reduction and, in coordination with other relevant federal agencies, is focusing on consumers, workers, and sensitive subpopulations like children. EPA is enhancing its ability to measure the effects of chemicals and pesticides on human health and the environment by introducing new measures to reduce the concentration of targeted chemicals and pesticides in the general population and children.
- ◆ **Enforcement and Compliance Assurance:** The Agency's enforcement and compliance assurance program is moving from a tool-based

(e.g., assistance, incentives, monitoring, and enforcement) to an environmental problem-based (e.g., air, water) approach to addressing noncompliance and environmental harms. Our current approach, rooted largely in the traditional inspection and enforcement model, has shown substantial environmental and human health benefits, but will not be able to keep up with expanding universes of regulated sources. For example, the universe of National Pollutant Discharge Elimination System (NPDES) sources has expanded from about one hundred thousand when the Clean Water Act (CWA) was passed to almost one million today. This is especially true in light of the current economic challenges faced by states, which perform the majority of inspections and enforcement actions. For those programs and sectors that have been the focus of EPA and state attention, the level of noncompliance shows us that serious violations are likely widespread, all but ensuring that there are areas across the country where basic health protections for Americans are in jeopardy.

EPA is adopting new strategic approaches to deal with these challenges that do not solely depend on inspections and enforcement to address serious violations, including:

- ◆ Building self-monitoring and reporting requirements into rules, which will allow government to better understand the compliance status at regulated facilities.
- ◆ Using 21st century technologies to facilitate the electronic transmission of data directly from regulated sources and states that generate the data, to government agencies that receive the data, which will improve the quality and timeliness of data available to make decisions.

- ◆ Making more information available to the public in an easy-to-use, understandable format so the public can demand better facility and government performance.

As part of this new approach, the Agency's enforcement program is developing a suite of measures that expand its ability to communicate to the public. As part of this suite, the Agency is including measures for its criminal enforcement program for the first time in the *Strategic Plan*. The suite of measures addresses:

- ◆ **Enforcement Presence/Level-of-Effort Measures:** The extent of the general enforcement and compliance assurance presence in communities;
- ◆ **Case-Linked Outcome Indicators:** The annual and long-term trends in environmental benefits resulting from EPA enforcement actions; and
- ◆ **Strategic Enforcement Measures:** The results of EPA's focused efforts to address specific, high-priority problems that make a difference to communities.

When viewed together, this suite of measures provides a more comprehensive understanding of the program than has been available previously. This suite of measures is captured in the figure on the next page.



Suite of Strategic Enforcement and Compliance Assurance Measures

Measures in the FY 2011–2015 Strategic Plan		Measures under Development
Enforcement Presence/ Level of Effort Measures	Case-Linked Outcome Indicators	Strategic Enforcement Measures (under development)
<ul style="list-style-type: none"> • Inspections & evaluations • Initiated & concluded civil judicial & administrative enforcement cases • Compliance status of open, non-Superfund consent decrees • Address cost recovery statute of limitations cases with total past costs above \$200,000 • Reaching settlement with potentially responsible parties (PRPs) • Criminal cases with charges filed • Criminal cases with defendants convicted 	<p style="text-align: center;">AIR</p> <ul style="list-style-type: none"> • Air pollutants reduced 	<p style="text-align: center;">AIR</p> <ul style="list-style-type: none"> • Air toxics • Criteria air pollutants
	<p style="text-align: center;">WATER</p> <ul style="list-style-type: none"> • Water pollutants reduced 	<p style="text-align: center;">WATER</p> <ul style="list-style-type: none"> • Raw sewage • Animal waste • Water compliance
	<p style="text-align: center;">WASTE</p> <ul style="list-style-type: none"> • Hazardous waste reduced • Contaminated media reduced 	<p style="text-align: center;">WASTE</p> <ul style="list-style-type: none"> • Wastes from mineral processing • Clean up hazardous waste sites in communities
	<p style="text-align: center;">CHEMICALS</p> <ul style="list-style-type: none"> • Toxic and pesticide pollutants 	<p style="text-align: center;">CHEMICALS</p> <ul style="list-style-type: none"> • Reduce exposure to pesticides • Enforce chemical management rules
	<p style="text-align: center;">CRIMINAL</p> <ul style="list-style-type: none"> • Criminal cases with most significant impacts • Criminal cases with individual defendants 	

The *Strategic Plan* includes five-year measures for EPA's enforcement presence and outcome indicators for which EPA will develop annual performance measures for inclusion in the *Annual Plan and Budget*, similar to all strategic measures included in this *Plan*.

The Agency has historically relied on enforcement presence or level-of-effort measures to communicate its enforcement and compliance presence to the public and regulated industry. These measures illustrate that the Agency is actively and consistently performing the activities necessary to find polluters, take appropriate action, and monitor defendants' compliance with settled enforcement cases. The Agency targets these activities toward the most serious human health and environmental problems across a variety of regulatory programs.

The Agency uses case-linked outcome indicators to communicate the environmental benefits gained from completed enforcement and compliance activities such as compliance assistance, compliance incentives, and enforcement cases. While linked, there is not a linear or proportional relationship between the activities and the outcomes.

Unlike level-of-effort results, which tend to be relatively consistent on a yearly basis, these outcome measures are dominated by very large enforcement cases and will typically vary widely over time depending on the pollution problems being addressed. For example, the measure of pounds of pollution reduced by enforcement actions varies widely from year to year and is not expected to trend upwards from one year to the next. In fact, as the most

significant pollution sources are addressed, the amount of pollution reduced by enforcement in a particular industrial sector should go down over time.

Over the next five years, the Agency will develop a new category of measurement—strategic enforcement measures—designed to demonstrate progress toward achieving its national enforcement goal of aggressively going after specific pollution problems that matter to communities. In addition, the strategic enforcement measures will illustrate the work done in Goal 5 to support Goals 1-4 of this *Strategic Plan*.

To launch this effort, the Agency's enforcement program will focus initially on developing measures that demonstrate progress toward the goals of its six national enforcement initiatives.² These initiatives target nationally important pollution problems where enforcement can play an important role to address serious noncompliance. We will develop strategic measures that chart our progress in addressing these significant compliance problems, recognizing that the measures, like the solutions, will vary with the problem. Two examples include: (1) targeting the sectors that contribute the largest amount of serious air pollution that causes significant harm to human health, which include coal-fired utilities and acid, glass, and cement plants; and (2) working to improve compliance by the tens of thousands of animal feeding operations that contribute to water pollution in many communities. We need both aggressive enforcement actions and new creative strategies to tackle sector compliance issues for these important, but very different, problems. Our measures will reflect those strategies, and attempt to do a more complete job of providing meaningful information to the public about our progress than the traditional measures alone can do. What we learn from measures developed for the national enforcement initiatives will be applied in setting measures for our other national enforcement goals.

One of the challenges in improving compliance and reducing pollution is the lack of solid information about facility releases and compliance. These information gaps make it harder to target facilities for enforcement, to understand and develop measures for compliance performance, and for communities to know what pollution is occurring in their own neighborhoods. EPA recognizes that we need to improve facility monitoring of pollution and make that information available to the public using 21st century technologies including more comprehensive electronic reporting. These efforts will increase transparency and create incentives to reduce pollution and to comply with the law, while also giving state and federal governments the information they need to target enforcement and track progress. Over the longer term, as efforts to increase electronically reported facility information take effect, consistently reported, sector-wide data may enable us to generate realistic compliance rates for some sectors. These efforts will help us to strengthen both performance and measures in the years ahead.

Where data, baselines, and targets are available to support the measures, EPA will include new measures for the national initiatives in the FY 2012 *Annual Plan and Budget* in February 2011 and will amend the *Strategic Plan* to include those that are suitable strategic measures. For those measures where EPA does not have existing data, EPA will identify necessary data sources and begin to collect the information with the intention of developing baselines and targets for additional strategic enforcement measures to be included in future *Annual Plans*.

The Agency will also work closely with its state partners to explore how to be more transparent regarding our joint accountability to protect the environment and public health by showing to the public, before FY 2015, both federal and state progress and problems in enforcement and compliance programs, as well as compliance monitoring coverage levels.

EPA's High Priority Performance Goals (Priority Goals)

In addition to the long-term strategic measures, EPA established six near-term Priority Goals in FY 2010 with 18- to 24-month operational targets that advance our strategic goals and serve as key indicators of our work.

EPA will report progress on these Priority Goals in the *Annual Plan and Budget* and through the Office of Management and Budget, with results regularly available to the public at www.performance.gov.

EPA's Priority Goals

EPA will improve the country's ability to measure and control greenhouse gas (GHG) emissions. Building a foundation for action is essential.

- By June 15, 2011, EPA will make publicly available 100 percent of facility-level GHG emissions data submitted to EPA in accordance with the GHG Reporting Rule, compliant with policies protecting confidential business information (CBI).
- In 2011, EPA, working with DOT, will begin implementation of regulations designed to reduce the GHG emissions from light-duty vehicles sold in the U.S. starting with model year 2012.

Clean water is essential for our quality of life and the health of our communities. EPA will take actions over the next two years to improve water quality.

- Chesapeake Bay watershed states (including the District of Columbia) will develop and submit Phase I watershed implementation plans by the end of CY 2010 and Phase II plans by the end of CY 2011 in support of EPA's final Chesapeake Bay total maximum daily load (TMDL) and consistent with the expectations and schedule described in EPA's letters of November 4 and December 29, 2009, and June 11, 2010.³
- Increase pollutant reducing enforcement actions in waters that do not meet water quality standards, and post results and analysis on the web.
- Over the next two years, EPA will initiate review/revision of at least four drinking water standards to strengthen public health protection.

EPA will ensure that environmental health and protection is delivered to our communities.

- By 2012, EPA will have initiated 20 enhanced brownfields community level projects that will include a new area-wide planning effort to benefit under-served and economically disadvantaged communities. This will allow those communities to assess and address a single large or multiple brownfields sites within their boundaries, thereby advancing area-wide planning to enable redevelopment of brownfields properties on a broader scale. EPA will provide technical assistance, coordinate its enforcement, water, and air quality programs, and work with other federal agencies, states, tribes, and local governments to implement associated targeted environmental improvements identified in each community's area-wide plan.

End Notes:

- 1 EPA will continue to report site construction completions as an annual performance measure in its *Annual Plan and Budget*.
- 2 Information about EPA's National Enforcement Initiatives for Fiscal Years 2011–2013 is available at <http://www.epa.gov/compliance/data/planning/initiatives/initiatives.html>. EPA solicited feedback on its FY 2011–2013 national enforcement initiatives in a Federal Register Notice in January 2010 and in an on-line discussion forum (see <http://blog.epa.gov/enforcementnationalpriority>).
- 3 EPA letters available at http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/tmdl_implementation_letter_110409.pdf, http://www.epa.gov/region03/chesapeake/bay_letter_1209.pdf, and http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/TMDLScheduleLetter.pdf.



Goal 1: Taking Action on Climate Change and Improving Air Quality. Reduce greenhouse gas emissions and develop adaptation strategies to address climate change, and protect and improve air quality.

Objective 1.1: Address Climate Change. Reduce the threats posed by climate change by reducing greenhouse gas emissions and taking actions that help communities and ecosystems become more resilient to the effects of climate change.

Strategic Measures:

Address Climate Change

- ◆ By 2015, the light-duty vehicle greenhouse gas rule will achieve reductions of 99 MMTCO₂Eq. (Baseline FY 2010: 0 MMTCO₂Eq.)
- ◆ By 2015, additional programs from across EPA will promote practices to help Americans save energy and conserve resources, leading to expected greenhouse gas emissions reductions of 740.1 MMTCO₂Eq. from a baseline without adoption of efficient practices. This reduction compares to 500.4 MMTCO₂Eq. reduced in 2008. (Baseline FY 2008: ENERGY STAR 140.8 MMTCO₂Eq., Industrial Programs¹ 314.2 MMTCO₂Eq., Smartway Transportation Partnership 4.2 MMTCO₂Eq., Pollution Prevention Programs 6.5 MMTCO₂Eq., Sustainable Materials Management Programs² 34.3 MMTCO₂Eq., WaterSense Program 0.4 MMTCO₂Eq., Executive Order 13514³ GHG Reduction Program 0.0 MMTCO₂Eq.)
- ◆ By 2015, EPA will integrate climate change science trend and scenario information into five major scientific models and/or decision-support tools used in implementing Agency environmental management programs to further EPA's mission, consistent with existing authorities (preference for one related to air quality, water quality, cleanup programs, and chemical safety).⁴ (Baseline FY 2010: 4 scientific models)
- ◆ By 2015, EPA will account for climate change by integrating climate change science trend and scenario information into five rule-making processes to further EPA's mission, consistent with existing authorities (preference for one related to air quality, water quality, cleanup programs, and chemical safety).⁴ (Baseline FY 2010: 0)
- ◆ By 2015, EPA will build resilience to climate change by integrating considerations of climate change impacts and adaptive measures into five major grant, loan, contract, or technical assistance programs to further EPA's mission, consistent with existing authorities (preference for one related to air quality, water quality, cleanup programs, and scientific research).⁴ (Baseline FY 2010: 0)

Objective 1.2: Improve Air Quality. Achieve and maintain health-based air pollution standards and reduce risk from toxic air pollutants and indoor air contaminants.

Strategic Measures:

Reduce Criteria Pollutants and Regional Haze

- ◆ By 2015, the population-weighted average concentrations of ozone (smog) in all monitored counties will decrease to 0.073 ppm compared to the average of 0.078 ppm in 2009.
- ◆ By 2015, the population-weighted average concentrations of inhalable fine particles in all monitored counties will decrease to 10.5 µg/m³ compared to the average of 11.7 µg/m³ in 2009.

- ◆ By 2015, reduce emissions of nitrogen oxides (NO_x) to 14.7 million tons per year compared to the 2009 level of 19.4 million tons emitted.
- ◆ By 2015, reduce emissions of sulfur dioxide (SO_2) to 7.4 million tons per year compared to the 2009 level of 13.8 million tons emitted.
- ◆ By 2015, reduce emissions of direct particulate matter (PM) to 3.9 million tons per year compared to the 2009 level of 4.2 million tons emitted.
- ◆ By 2018, visibility in scenic parks and wilderness areas will improve by 15 percent in the East and 5 percent in the West, on the 20 percent worst visibility days, as compared to visibility on the 20 percent worst days during the 2000–2004 baseline.
- ◆ By 2015, with EPA support for developing capability including training, policy, and administrative and technical support, 15 additional tribes will possess the expertise and capability to implement the Clean Air Act in Indian country (as demonstrated by successful completion of an eligibility determination under the Tribal Authority Rule), for a cumulative total of 62 from the 2009 baseline of 47 tribes.

Reduce Air Toxics

- ◆ By 2015, reduce emissions of air toxics (toxicity-weighted for cancer) to 4.2 million tons from the 1993 toxicity-weighted baseline of 7.2 million tons.⁵

Reduce the Adverse Ecological Effects of Acid Deposition

- ◆ By 2015, air pollution emissions reductions will reduce the number of chronically acidic water bodies and improve associated ecosystem health in acid-sensitive regions of the northern and eastern United States by approximately 10 percent below the 2001 baseline of approximately 500 lakes and 5,000 kilometers of stream length.

Reduce Exposure to Indoor Air Pollutants

- ◆ By 2015, the number of future premature lung cancer deaths prevented annually through lowered radon exposure will increase to 1,460 from the 2008 baseline of 756 future premature lung cancer deaths prevented.
- ◆ By 2015, the number of people taking all essential actions to reduce exposure to indoor environmental asthma triggers will increase to 7.6 million from the 2003 baseline of 3.0 million. EPA will place special emphasis on children at home and in schools, and on other disproportionately impacted populations.

Objective 1.3: Restore the Ozone Layer. Restore the earth's stratospheric ozone layer and protect the public from the harmful effects of ultraviolet (UV) radiation.

Strategic Measure:

Reduce Consumption of Ozone-Depleting Substances

- ◆ By 2015, U.S. consumption of hydrochlorofluorocarbons (HCFCs), chemicals that deplete the Earth's protective ozone layer, will be less than 1,520 tons per year of ozone depletion potential from the 2009 baseline of 9,900 tons per year. By this time, as a result of worldwide reduction in ozone-depleting substances, the level of "equivalent effective stratospheric chlorine" (EESC) in the atmosphere will have peaked at 3.185 parts per billion (ppb) of air by volume and begun its gradual decline to less than 1.800 ppb (1980 level).



Objective 1.4: Reduce Unnecessary Exposure to Radiation. Minimize unnecessary releases of radiation and be prepared to minimize impacts should unwanted releases occur.

Strategic Measure:

Prepare for Radiological Emergencies

- ◆ Through 2015, EPA will maintain a 90 percent level of readiness of radiation program personnel and assets to support federal radiological emergency response and recovery operations, maintaining the 2010 baseline of 90 percent.

End Notes:

- 1 Industrial Programs include ENERGY STAR for Industry, Natural Gas STAR, Coalbed Methane Outreach Program (CMOP), Landfill Methane Outreach Program (LMOP), Green Power Partnership, Combined Heat and Power Partnership (CHP), Voluntary Aluminum Industry Partnership (VAIP), HFC-23 Emission Reduction Partnerships, Mobile Air Conditioning Climate Protection Partnership (MAC), Environmental Stewardship Initiative, Significant New Alternatives Policy Program (SNAP), Responsible Appliance Disposal Program (RAD), GreenChill Advanced Refrigeration Partnership, and Landfill Rule.
- 2 Sustainable Materials Management Programs include WasteWise, National Waste Recycling, and Coal Combustion Products Recycling (C2P2).
- 3 The Federal Leadership in Environmental, Energy, and Economic Performance Executive Order was signed on October 5, 2009. The Executive Order sets sustainability goals for federal agencies and focuses on making improvements in their environmental, energy, and economic performance.
- 4 The climate is changing and this can impact EPA's ability to achieve its mission and strategic goals. EPA is currently participating in an Interagency Climate Change Adaptation Task Force which will develop recommendations towards a national climate change adaptation strategy in the fall of 2010. EPA's adaptation measures provide a snapshot of EPA's overall effort to integrate climate change adaptation into mainstream decision making within EPA. As the work of the Task Force continues, future measures may be developed that assess the effectiveness of adaptation actions or that reflect a more refined set of climate change adaptation priorities.
- 5 The 2015 target is an estimate based on the 2005 National Emissions Inventory (NEI) released in 2008, which does not include the impacts of post-2007 rulemakings. Updated estimates that do include the impacts of more recent rulemakings will be available after the release of the 2008 NEI in 2011.



Goal 2: Protecting America's Waters. Protect and restore our waters to ensure that drinking water is safe, and that aquatic ecosystems sustain fish, plants and wildlife, and economic, recreational, and subsistence activities.

Objective 2.1: Protect Human Health. Reduce human exposure to contaminants in drinking water, fish and shellfish, and recreational waters, including protecting source waters.

Strategic Measures:

Water Safe to Drink

- ◆ By 2015, 90 percent of community water systems will provide drinking water that meets all applicable health-based drinking water standards through approaches including effective treatment and source water protection. (2005 baseline: 89 percent. Status as of FY 2009: 89 percent.)
- ◆ By 2015, 88 percent of the population in Indian country served by community water systems will receive drinking water that meets all applicable health-based drinking water standards. (2005 baseline: 86 percent. Status as of FY 2009: 81 percent.)
- ◆ By 2015, in coordination with other federal agencies, provide access to safe drinking water for 136,100 American Indian and Alaska Native homes. (FY 2009 baseline: 80,900 homes. Universe: 360,000 homes.)

Fish and Shellfish Safe to Eat

- ◆ By 2015, reduce the percentage of women of childbearing age having mercury levels in blood above the level of concern to 4.6 percent. (2002 baseline: 5.7 percent of women of childbearing age have mercury blood levels above levels of concern identified by the National Health and Nutrition Examination Survey (NHANES).)¹

Water Safe for Swimming

- ◆ By 2015, maintain the percentage of days of the beach season that coastal and Great Lakes beaches monitored by state beach safety programs are open and safe for swimming at 95 percent. (2007 baseline: Beaches open 95 percent of the 679,589 days of the beach season (beach season days are equal to 3,647 beaches multiplied by variable number of days of beach season at each beach). Status as of FY 2009: 95 percent.)²

Objective 2.2: Protect and Restore Watersheds and Aquatic Ecosystems.

Protect the quality of rivers, lakes, streams, and wetlands on a watershed basis, and protect urban, coastal, and ocean waters.

Strategic Measures:

Improve Water Quality on a Watershed Basis

- ◆ By 2015, attain water quality standards for all pollutants and impairments in more than 3,360 water bodies identified in 2002 as not attaining standards (cumulative). (2002 universe: 39,798 water bodies identified by states and tribes as not meeting water quality standards. Water bodies where mercury is among multiple pollutants

causing impairment may be counted toward this target when all pollutants but mercury attain standards, but must be identified as still needing restoration for mercury; 1,703 impaired water bodies are impaired by multiple pollutants including mercury, and 6,501 are impaired by mercury alone. Status as of FY 2009: 2,505 water bodies attained standards.)

- ◆ By 2015, improve water quality conditions in 330 impaired watersheds nationwide using the watershed approach (cumulative). (2002 baseline: Zero watersheds improved of an estimated 4,800 impaired watersheds of focus having one or more water bodies impaired. The watershed boundaries for this measure are those established at the "12-digit" scale by the U.S. Geological Survey (USGS). Watersheds at this scale average 22 square miles in size. "Improved" means that one or more of the impairment causes identified in 2002 are removed for at least 40 percent of the impaired water bodies or impaired miles/acres, or there is significant watershed-wide improvement, as demonstrated by valid scientific information, in one or more water quality parameters associated with the impairments. Status as of FY 2009: 104 improved watersheds.)
- ◆ Through 2015, ensure that the condition of the Nation's streams and lakes does not degrade (i.e., there is no statistically significant increase in the percent rated "poor" and no statistically significant decrease rated "good.") (2006 baseline for streams: 28 percent in good condition; 25 percent in fair condition; 42 percent in poor condition. 2010 baseline for lakes: 56 percent in good condition; 21 percent in fair condition; 22 percent in poor condition.)
- ◆ By 2015, improve water quality in Indian country at 50 or more baseline monitoring stations in tribal waters (cumulative) (i.e., show improvement in one or more of seven key parameters: dissolved oxygen, pH, water temperature, total nitrogen, total phosphorus, pathogen indicators, and turbidity) and identify monitoring stations on tribal lands that are showing no degradation in water quality (meaning the waters are meeting uses). (2006 baseline: 185 monitoring stations on tribal waters located where water quality has been depressed and activities are underway or planned to improve water quality, out of an estimated 2,037 stations operated by tribes.)
- ◆ By 2015, in coordination with other federal agencies, provide access to basic sanitation for 67,900 American Indian and Alaska

Native homes. (FY 2009 baseline: 43,600 homes. Universe: 360,000 homes.)

Improve Coastal and Ocean Waters

- ◆ By 2015, improve regional coastal aquatic ecosystem health, as measured on the "good/fair/poor" scale of the National Coastal Condition Report. (FY 2009 baseline: National rating of "fair" or 2.8 where the rating is based on a 4-point system ranging from 1.0 to 5.0 in which 1 is poor and 5 is good using the National Coastal Condition Report indicators for water and sediment, coastal habitat, benthic index, and fish contamination.)
- ◆ By 2015, 95 percent of active dredged material ocean dumping sites, as determined by 3-year average, will have achieved environmentally acceptable conditions (as reflected in each site's management plan and measured through onsite monitoring programs). (2009 baseline: 99 percent. FY 2009 universe is 65.) (Due to variability in the universe of sites, results vary from year to year (e.g., between 85 percent and 99 percent). While this much variability is not expected every year, the results are expected to have some change each year.)
- ◆ By 2015, working with partners, protect or restore an additional (i.e., measuring from 2009 forward) 600,000 acres of habitat within the study areas for the 28 estuaries that are part of the National Estuary Program. (2009 baseline: 900,956 acres of habitat protected or restored, cumulative from 2002–2009. In FY 2009, 125,437 acres were protected or restored.)



Increase Wetlands

- ◆ By 2015, working with partners, achieve a net increase of wetlands nationwide, with additional focus on coastal wetlands, and biological and functional measures and assessment of wetland condition. (2004 baseline: 32,000 acres annual net national wetland gain.)

Improve the Health of the Great Lakes

- ◆ By 2015, prevent water pollution and protect aquatic systems so that the overall ecosystem health of the Great Lakes is at least 24.7 points on a 40-point scale. (2009 baseline: Great Lakes rating of 22.5 (expected) on the 40-point scale where the rating uses select Great Lakes State of the Lakes Ecosystem indicators based on a 1 to 5 rating system for each indicator, where 1 is poor and 5 is good.)
- ◆ By 2015, remediate a cumulative total of 10.2 million cubic yards of contaminated sediment in the Great Lakes. (2009 baseline: Of the 46.5 million cubic yards once estimated to need remediation in the Great Lakes, 6.0 million cubic yards of contaminated sediments have been remediated from 1997 through 2008.)

Improve the Health of the Chesapeake Bay Ecosystem

- ◆ By 2015, achieve 50 percent (92,500 acres) of the 185,000 acres of submerged aquatic vegetation necessary to achieve Chesapeake Bay water quality standards. (2008 baseline: 35 percent, 64,912 acres.)

Restore and Protect the Gulf of Mexico

- ◆ By 2015, reduce releases of nutrients throughout the Mississippi River Basin to reduce the size of the hypoxic zone in the Gulf of Mexico to

less than 5,000 km², as measured by the 5-year running average of the size of the zone. (Baseline: 2005–2009 running average size is 15,670 km².)

Restore and Protect the Long Island Sound

- ◆ By 2015, reduce the maximum area of hypoxia in Long Island Sound by 15 percent from the pre-TMDL average of 208 square miles as measured by the 5-year running average size of the zone. (Baseline: Pre-total maximum daily load (TMDL) average conditions based on 1987–1999 data is 208 square miles. Post-TMDL includes years 2000–2014. Universe: The total surface area of Long Island Sound is approximately 1,268 square miles; the potential for the maximum area of hypoxia would be 1,268 square miles.)

Restore and Protect the Puget Sound Basin

- ◆ By 2015, improve water quality and enable the lifting of harvest restrictions in 4,300 acres of shellfish bed growing areas impacted by degraded or declining water quality in the Puget Sound. (2009 baseline: 1,730 acres of shellfish beds with harvest restrictions in 2006 had their restrictions lifted. Universe: 30,000 acres of commercial shellfish beds with harvest restrictions in 2006.)

Sustain and Restore the U.S.–Mexico Border Environmental Health

- ◆ By 2015, provide safe drinking water or adequate wastewater sanitation to 75 percent of the homes in the U.S.–Mexico Border area that lacked access to either service in 2003. (2003 Universe: 98,515 homes lacked drinking water and 690,723 homes lacked adequate wastewater sanitation based on a 2003 assessment of homes in the U.S.–Mexico Border area. 2015 target: 73,886 homes provided with safe drinking water and 518,042 homes with adequate wastewater sanitation.)

End Notes:

- 1 EPA is in the process of developing a consistent methodology for analyzing the data from Centers for Disease Control and Prevention's National Health and Nutrition Examination Survey (NHANES) reports. The baseline and target may be reset when the analysis is complete at the end of CY 2010.
- 2 In 2007, EPA added Guam, American Samoa, and the Northern Marianas, which resulted in a lower baseline and target.



Goal 3: Cleaning Up Communities and Advancing Sustainable Development. Clean up communities, advance sustainable development, and protect disproportionately impacted low-income, minority, and tribal communities. Prevent releases of harmful substances and clean up and restore contaminated areas.

Objective 3.1: Promote Sustainable and Livable Communities. Support sustainable, resilient, and livable communities by working with local, state, tribal, and federal partners to promote smart growth, emergency preparedness and recovery planning, brownfield redevelopment, and the equitable distribution of environmental benefits.

Strategic Measures:

Promote Sustainable Communities

- ◆ By 2015, reduce the air, water, land, and human health impacts of new growth and development through the use of smart growth and sustainable development strategies in 600 (cumulative) communities, which includes local municipalities, regional entities, and state governments, through activities resulting from EPA and federal partner actions. (Baseline: In FY 2010, an estimated 34 communities will be assisted.)¹

Assess and Cleanup Brownfields

- ◆ By 2015, conduct environmental assessments at 20,600 (cumulative) brownfield properties. (Baseline: As of the end of FY 2009, EPA assessed 14,600 properties.)

- ◆ By 2015, make an additional 17,800 acres of brownfield properties ready for reuse from the 2009 baseline. (Baseline: As of the end of FY 2009, EPA made 11,800 acres ready for reuse.)

Reduce Chemical Risks at Facilities and in Communities

- ◆ By 2015, continue to maintain the Risk Management Plan (RMP) prevention program and further reduce by 10 percent the number of accidents at RMP facilities. (Baseline: There was an annual average of 190 accidents based on RMP program data between 2005 and 2009.)

Objective 3.2: Preserve Land. Conserve resources and prevent land contamination by reducing waste generation, increasing recycling, and ensuring proper management of waste and petroleum products.

Strategic Measures:

Waste Generation and Recycling

- ◆ By 2015, increase the amount of municipal solid waste reduced, reused, or recycled by 2.5 billion pounds. (At the end of FY 2008, 22.5 billion pounds of municipal solid waste had been reduced, reused, or recycled.)
- ◆ By 2015, increase beneficial use of coal combustion ash to 50 percent from 40 percent in 2008.

- ◆ By 2015, increase by 78 the number of tribes covered by an integrated waste management plan compared to FY 2009. (At the end of FY 2009, 94 of 572 federally recognized tribes were covered by an integrated waste management plan.)
- ◆ By 2015, close, clean up, or upgrade 281 open dumps in Indian country and on other tribal lands compared to FY 2009. (At the end of FY 2009, 412 open dumps were closed, cleaned up, or upgraded. As of April 2010, 3,464 open dumps were listed in the

Indian Health Service Operation and Maintenance System Database, which is dynamic because of the ongoing assessment of open dumps.)

Minimize Releases of Hazardous Waste and Petroleum Products

- ◆ By 2015, prevent releases at 500 hazardous waste management facilities with initial approved controls or updated controls resulting in the protection of an estimated 3 million people living within a mile of all facilities with controls. (Baseline: At the end of FY 2009, it was estimated that 789 facilities will require these controls out of the universe of 2,468 facilities with about 10,000 process units. The goal of 500 represents 63 percent of the facilities needing controls.)
- ◆ Each year through 2015, increase the percentage of underground storage tank (UST) facilities that are in significant operational compliance (SOC) with both release detection and release prevention requirements by 0.5 percent over the previous year's target. (Baseline: This means an increase of facilities in SOC from 65.5 percent in 2010 to 68 percent in 2015.)
- ◆ Each year through 2015, reduce the number of confirmed releases at UST facilities to 5 percent fewer than the prior year's target. (Baseline: Between FY 1999 and FY 2009, confirmed UST releases averaged 8,113.)

Objective 3.3: Restore Land. Prepare for and respond to accidental or intentional releases of contaminants and clean up and restore polluted sites.

Strategic Measures:

Deepwater Horizon BP Oil Spill: Oil Spill Program Review

- ◆ By 2015, in response to the Deepwater Horizon BP oil spill in the Gulf of Mexico, EPA will conduct a thorough assessment of its rules, guidelines, and procedures relating to all relevant aspects of EPA's oil spill program, including prevention of, preparedness for, response to, and recovery efforts, and update them as needed, and ensure that the Agency has the appropriate tools to respond to environmental disasters of this scale.
- ◆ By 2015, no more than 1.5 million gallons will be spilled annually at Facility Response Plan (FRP) facilities, a 15 percent reduction from the annual average of 1.7 million gallons spilled from 2005–2009.

were conducted by PRPs under a voluntary agreement, an administrative order on consent, or a unilateral administrative order.)

Emergency Preparedness and Response

- ◆ By 2015, achieve and maintain at least 80 percent of the maximum score on the Core National Approach to Response (NAR) evaluation criteria. (Baseline: In FY 2009, the average Core NAR Score was 84 percent for EPA headquarters, regions, and special teams prepared for responding to emergencies.)²
- ◆ By 2015, complete an additional 1,700 Superfund removals through Agency-financed actions and through oversight of removals conducted by potentially responsible parties (PRPs). (Baseline: In FY 2009, there were 434 Superfund removal actions completed including 214 funded by the Agency and 220 overseen by the Agency that were conducted by PRPs under a voluntary agreement, an administrative order on consent, or a unilateral administrative order.)
- ◆ By 2015, complete 93,400 assessments at potential hazardous waste sites to determine if they warrant Comprehensive Emergency Response, Compensation, and Liability Act (CERCLA) remedial response or other cleanup activities. (Baseline: As of 2010, the cumulative total number of assessments completed was 88,000.)³
- ◆ By 2015, increase to 84 percent the number of Superfund final and deleted NPL sites and RCRA facilities where human exposures to toxins from contaminated sites are under control. (Baseline: As of October 2009, 70 percent Superfund final and deleted NPL sites and RCRA facilities have human exposures under control out of a universe of 5,330.)⁴
- ◆ By 2015, increase to 78 percent the number of Resource Conservation and Recovery Act (RCRA) facilities with migration of contaminated groundwater under control. (Baseline: At the

end of FY 2009, the migration of contaminated groundwater was controlled at 58 percent of all 3,746 facilities needing corrective action.)

- ◆ By 2015, increase to 56 percent the number of RCRA facilities with final remedies constructed. (Baseline: At the end of FY 2009, all cleanup remedies had been constructed at 32 percent of all 3,746 facilities needing corrective action.)
- ◆ Each year through 2015, reduce the backlog of LUST cleanups (confirmed releases that have yet to be cleaned up) that do not meet risk-based standards for human exposure and groundwater migration by 1 percent. This means a decrease from 21 percent in 2009 to 14 percent in 2015. (At the end of FY 2009, there were 100,165 releases not yet cleaned up.)
- ◆ Each year through 2015, reduce the backlog of LUST cleanups (confirmed releases that have yet to be cleaned up) in Indian country that do not meet applicable risk-based standards for human exposure and groundwater migration by 1 percent. This means a decrease from 28 percent in 2009 to 22 percent in 2015.
- ◆ By 2015, ensure that 799 Superfund NPL sites are "sitewide ready for anticipated use." (Baseline: As of October 2009, 409 final and deleted NPL sites had achieved "sitewide ready for anticipated use.")⁵

Objective 3.4: Strengthen Human Health and Environmental Protection

in Indian Country. Support federally-recognized tribes to build environmental management capacity, assess environmental conditions and measure results, and implement environmental programs in Indian country.

Strategic Measures:

Improve Human Health and the Environment in Indian Country

- ◆ By 2015, increase the percent of tribes implementing federal regulatory environmental programs in Indian country to 18 percent. (FY 2009 baseline: 13 percent of 572 tribes)
- ◆ By 2015, increase the percent of tribes conducting EPA-approved environmental monitoring and assessment activities in Indian country to 50 percent. (FY 2009 baseline: 40 percent of 572 tribes)

End Notes:

- 1 Included in the cumulative number are communities receiving assistance from: (1) direct EPA technical assistance programs; (2) EPA-funded grants and cooperative agreements to non-governmental organizations; and (3) in a limited number of communities (i.e., 6 of the total 34 communities in the FY 2010 baseline), technical assistance done in collaboration with other EPA programs (such as EPA's brownfields program) and other federal agencies (such as the Federal Emergency Management Agency and the U.S. Departments of Transportation and Housing and Urban Development).
- 2 Consistent with the government-wide National Response Framework (NRF), EPA will work to fully implement the priorities under its internal NAR so that the Agency is prepared to respond to multiple nationally significant incidents. Core NAR builds upon the Core Emergency Response concept while integrating the priority elements of EPA's NAR Preparedness Plan, and the Homeland Security Priority Workplan, to reflect an Agency-wide assessment of progress.
- 3 This new strategic measure accounts for all remedial assessments performed at sites addressed under the Superfund program, whereas the measure in the previous (2006–2011) *Strategic Plan* captured only a subset of these assessments (i.e., the final assessments completed at sites). By capturing the assessment work leading to final assessment decisions, including the initial screening assessments to determine Superfund eligibility, the new measure more fully accounts for the work performed during the Superfund site assessment process.
- 4 EPA is currently revising its dioxin risk assessment which may affect the targets and baselines for the human exposures under control and sitewide ready for anticipated use measures.
- 5 As part of the Integrated Cleanup Initiative, EPA is evaluating "sitewide ready for anticipated use" across all cleanup programs and may modify the above Superfund measure in the future to include corresponding brownfields, RCRA corrective action, and leaking underground storage tank program goals.



Goal 4: Ensuring the Safety of Chemicals and Preventing Pollution. Reduce the risk and increase the safety of chemicals and prevent pollution at the source.

Objective 4.1: Ensure Chemical Safety. Reduce the risk of chemicals that enter our products, our environment, and our bodies.

Strategic Measures:

Protect Human Health from Chemical Risks

- ◆ By 2015, reduce by 40 percent the number of moderate to severe exposure incidents associated with organophosphates and carbamate insecticides in the general population. (Baseline is 316 moderate and severe incidents reported to the Poison Control Center (PCC) National Poison Data System (NPDS) in 2008 for organophosphate and carbamate pesticides.)
- ◆ By 2014, reduce the percentage of children with blood lead levels above 5 µg/dl to 1.0 percent or less. (Baseline is 3.0 percent in the 2005–2008 sampling period.)¹
- ◆ By 2014, reduce the percent difference in the geometric mean blood lead level in low-income children 1 to 5 years old as compared to the geometric mean for non-low income children 1 to 5 years old to 10.0 percent. (Baseline is 23.4 percent difference in the geometric mean blood lead level in low-income children 1 to 5 years old as compared to the geometric mean for non-low-income children 1 to 5 years old in 2005–2008.)¹
- ◆ By 2014, reduce the concentration in the general population for the following chemicals: non-specific organophosphate metabolites by 75 percent; chlorpyrifos metabolite (TCPy) by 75 percent; and perfluoro-octanoic acid (PFOA) in serum by 2 percent. (Baselines are derived from the Centers for Disease Control and Prevention's National Health and Nutrition Examination Survey (NHANES) concentration data in the general population and results are reported biennially. Pesticide baselines are based on 2001–2002 95th percentile data for non-specific organophosphate metabolites (0.45 µmol/L) and chlorpyrifos metabolite (TCPy) (12.4 µg/L). PFOA baseline is based on 2005–2006 geometric mean data in serum (3.92 µg/L).)
- ◆ By 2014, reduce concentration for the following chemicals in children: non-specific organophosphate metabolites by 75 percent and chlorpyrifos metabolite (TCPy) by 75 percent. (Baselines are derived from the Centers for Disease Control and Prevention's National Health and Nutrition Examination Survey (NHANES) metabolite concentration data in children and results are reported biennially. Pesticide baselines are based on 2001–2002 data for non-specific organophosphate metabolites (0.55 µmol/L) and chlorpyrifos metabolite (TCPy) (16.0 µg/L).)
- ◆ By 2015, complete endocrine disruptor screening program (EDSP) decisions for 100 percent of chemicals for which complete EDSP information is expected to be available by the end of 2014. (Baseline is no decisions have been completed through 2009 for any of the chemicals for which complete EDSP information is anticipated to be available by the end of 2014. EDSP decisions for a chemical can range from determining potential to interact with the estrogen, androgen, or thyroid hormone systems to otherwise determining whether further endocrine related testing is necessary.)

Protect Ecosystems from Chemical Risks

- ◆ By 2015, no watersheds will exceed aquatic life benchmarks for targeted pesticides. (Based on FY 1992–2001 data from the watersheds sampled by the USGS National Water Quality

Assessment (NAWQA) program, urban watersheds that exceed the National Pesticide Program aquatic life benchmarks are 73 percent for diazinon, 37 percent for chlorpyrifos, and 13 percent for carbaryl. Agricultural watersheds that exceed the National Pesticide Program aquatic life benchmarks are 18 percent for azinphos-methyl and 18 percent for chlorpyrifos.)

Ensure Transparency of Chemical Health and Safety Information

- ◆ Through 2015, make all health and safety studies available to the public for chemicals in commerce, to the extent allowed by law. (Baseline is 21,994 confidential business information (CBI) cases of Toxic Substances Control Act (TSCA) health and safety studies as defined in TSCA Section 3(6) that were submitted for chemicals potentially in commerce between the enactment of TSCA and January 21, 2010.)

Objective 4.2: Promote Pollution Prevention. Conserve and protect natural resources by promoting pollution prevention and the adoption of other stewardship practices by companies, communities, governmental organizations, and individuals.

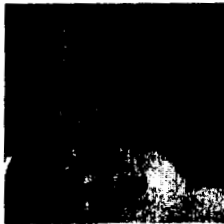
Strategic Measures:

Prevent Pollution and Promote Environmental Stewardship

- ◆ By 2015, reduce 15 billion pounds of hazardous materials cumulatively through pollution prevention. (Baseline is 4.8 billion pounds reduced through 2008.)
- ◆ By 2015, reduce 9 million metric tons of carbon dioxide equivalent (MMTCO₂Eq.) cumulatively through pollution prevention. (Baseline is 6.5 MMTCO₂Eq. reduced through 2008. The data from this measure are also calculated into the Agency's overall GHG measure under Goal 1.)
- ◆ By 2015, reduce water use by an additional 24 billion gallons cumulatively through pollution prevention. (Baseline is 51 billion gallons reduced through 2008.)
- ◆ By 2015, save \$1.2 billion through pollution prevention improvements in business, institutional, and government costs cumulatively. (Baseline is \$3.1 billion saved through 2008.)
- ◆ Through 2015, increase the use of safer chemicals cumulatively by 40 percent. (Baseline: 476 million pounds of safer chemicals used in 2009 as reported to be in commerce by Design for the Environment program.)

End Note:

- 1 Centers for Disease Control and Prevention's National Health and Nutrition Examination Survey (NHANES) data are collected in 2-year samples and released incrementally with the data typically becoming available 2 to 3 years after the sampling period ends.



Goal 5: Enforcing Environmental Laws. Protect human health and the environment through vigorous and targeted civil and criminal enforcement. Assure compliance with environmental laws.

Objective 5.1: Enforce Environmental Laws. Pursue vigorous civil and criminal enforcement that targets the most serious water, air, and chemical hazards in communities. Assure strong, consistent, and effective enforcement of federal environmental laws nationwide.

Strategic Measures:

Note: The enforcement measures in this *Plan* reflect: (1) the enforcement presence and level-of-effort measures that reflect the Agency's continued and strong investment in enforcement work; and (2) the reductions in pollution achieved through enforcement cases (i.e., case-specific outcome indicators) which are dominated by the very largest cases and will typically vary widely over time depending on the pollution problems being addressed. EPA is also developing enforcement measures for work done to support the strategic outcomes under each of the media-specific goals in this *Plan*; these measures will be described in future *Annual Plans and Budgets* and *Annual Performance Reports*.

Maintain Enforcement Presence

- ◆ By 2015, conduct 105,000 federal inspections and evaluations (5-year cumulative). (FY 2005–2009 baseline: 21,000 annually)
- ◆ By 2015, initiate 19,500 civil judicial and administrative enforcement cases (5-year cumulative). (FY 2005–2009 baseline: 3,900 annually)
- ◆ By 2015, conclude 19,000 civil judicial and administrative enforcement cases (5-year cumulative). (FY 2005–2009 baseline: 3,800 annually)
- ◆ By 2015, maintain review of the overall compliance status of 100 percent of the open consent decrees. (Baseline 2009: 100 percent)
- ◆ Each year through 2015, support cleanups and save federal dollars for sites where there are no alternatives by: (1) reaching a settlement or taking an enforcement action before the start of a remedial action at 99 percent of Superfund sites having viable responsible parties other than the federal government; and (2) addressing all cost recovery statute of limitation cases with total past costs greater than or equal to \$200,000. (Baseline: 99 percent of sites reaching a settlement or EPA taking an enforcement action (FY

2007–2009 annual average); 100 percent cost recovery statute of limitation cases addressed (FY 2009))

- ◆ By 2015, increase the percentage of criminal cases with charges filed to 45 percent. (FY 2006–2010 baseline: 36 percent)
- ◆ By 2015, maintain an 85 percent conviction rate for criminal defendants. (FY 2006–2010 baseline: 85 percent)

Support Taking Action on Climate Change and Improving Air Quality

- ◆ By 2015, reduce, treat, or eliminate 2,400 million estimated pounds of air pollutants as a result of concluded enforcement actions (5-year cumulative). (FY 2005–2008 baseline: 480 million pounds, annual average over the period)

Support Protecting America's Waters

- ◆ By 2015, reduce, treat, or eliminate 1,600 million estimated pounds of water pollutants as a result of concluded enforcement actions (5-year cumulative). (FY 2005–2008 baseline: 320 million pounds, annual average over the period)

Support Cleaning Up Communities and Advancing Sustainable Development

- ◆ By 2015, reduce, treat, or eliminate 32,000 million estimated pounds of hazardous waste as a result of concluded enforcement actions (5-year cumulative). (FY 2008 baseline: 6,500 million pounds)
- ◆ By 2015, obtain commitments to clean up 1,500 million cubic yards of contaminated soil and groundwater media¹ as a result of concluded CERCLA and RCRA corrective action enforcement actions (5-year cumulative). (FY 2007–2009 baseline: 300 million cubic yards of contaminated soil and groundwater media, annual average over the period)

Support Ensuring the Safety of Chemicals and Preventing Pollution

- ◆ By 2015, reduce, treat, or eliminate 19.0 million estimated pounds of toxic and pesticide pollutants as a result of concluded enforcement actions (5-year cumulative). (FY 2005–2008 baseline: 3.8 million pounds, annual average over the period)

Enhance Strategic Deterrence through Criminal Enforcement

- ◆ By 2015, increase the percentage of criminal cases having the most significant health, environmental, and deterrence impacts to 50 percent. (FY 2010 baseline: 36 percent)²
- ◆ By 2015, maintain 75 percent of criminal cases with an individual defendant. (FY 2006–2008 baseline: 75 percent)

End Notes:

- 1 Contaminated groundwater media, as defined for the Superfund and RCRA corrective action programs, is the volume of physical aquifer (both soil and water) that will be addressed by the response action.
- 2 EPA collects data on a variety of case attributes to describe the range, complexity, and quality of our criminal enforcement national docket. Cases are tiered depending on factors such as the human health (death, injury) and environmental impacts, the nature of the pollutant and the its release into the environment, and the characteristics of the subject(s). This measure reflects the percentage of cases in the upper tiers.

Office of the Chief Financial Officer
Office of Planning, Analysis, and Accountability (2721A)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
<http://www.epa.gov/ocfo/plan/plan.htm>
EPA-190-R-10-002
September 2010

AL-10-001-2718

HELYN A. WAXMAN, CALIFORNIA
CHAIRMAN

JOHN D. DINGELL, MICHIGAN
CHAIRMAN EMERITUS

EDWARD J. MARKEY, MASSACHUSETTS
RICK BALLENGER, VIRGINIA

KRANK FALKENBERG, NEW JERSEY
BART GORDON, TENNESSEE

GUYER R. HUGHES, ILLINOIS
ANDY L. ESKROW, CALIFORNIA

BART STUBBS, MICHIGAN
LLOYD L. BAKER, NEW YORK

KEITH GREEN, TEXAS
JANNA J. ROBERTS, IOWA

JOE B. CLAY, MISSOURI
BOB STENNER, CALIFORNIA

CHRIS L. SMITH, CONNECTICUT
DAVE MARSHALL, WISCONSIN

JOHN L. MICA, FLORIDA
CHARLES W. STENNER, ILLINOIS

CHARLES A. GOSWAMI, TEXAS
JAMES L. COOPER, TEXAS

ANTHONY L. GONZALEZ, ARIZONA
TAMMY BALDWIN, WISCONSIN

MIKE ROSS, ARKANSAS
ANTHONY L. GONZALEZ, NEW YORK

JANNA J. ROBERTS, IOWA
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

JOE B. CLAY, MISSOURI
JOE B. CLAY, MISSOURI

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

M. J. ROBERTS, CHAIRMAN
F. J. ROBERTS, CHAIRMAN
M. J. ROBERTS, CHAIRMAN

energycommerce.house.gov

JOE BARTON, TEXAS
RANKING MEMBER

ROY BLUNT, MISSOURI
DEPUTY RANKING MEMBER

RALPH M. HALL, TEXAS
FRED LIPTON, MICHIGAN

GUYER R. HUGHES, ILLINOIS
ED WHITFIELD, KENTUCKY

JOHN SHIMKUS, ILLINOIS
JOHN B. SHADLOFF, ARIZONA

STEVE BUYER, INDIANA
GEORGE RADANOVICH, CALIFORNIA

JOSEPH R. PITTS, PENNSYLVANIA
MARY BONO MACK, CALIFORNIA

LEE TERRY, NEBRASKA
MIKE ROGERS, MICHIGAN

SKELLY WALKER, MARYLAND
JOHN SULLIVAN, OKLAHOMA

JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA

MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE

PHIL LINDSEY, GEORGIA
STEVE SCALISE, LOUISIANA

PARKER GRIFITH, ALABAMA
ROBERT E. LATTI, OHIO

July 29, 2010

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

Some in Congress believe that renewable fuels can play a role in improving our energy security. However, these fuels can only play this role if they are introduced in a manner that adequately protects consumers. They must be integrated into the fuel system in a way that does not damage people's cars, trucks, lawn mowers, boats, or other non-road equipment.

We are writing to request information about what plans, if any, the Environmental Protection Agency (EPA) has developed to ensure that increasing the permissible level of ethanol in gasoline is accomplished in a way that does not present any potential harm to air quality, consumers' investments in cars, trucks, and other engines and equipment, or small business owners' investments in gas stations.

In particular, EPA is currently considering a petition from ethanol producers to allow the sale of gasoline that contains up to 15 percent ethanol (E15). As you consider this petition, we believe it is important that you protect the investments the American people have made in their cars, trucks, boats, lawn mowers, and other engines and equipment, and the investments that many small business owners have made in their gas stations. While E15 may work well in some types of vehicles, preliminary information raises significant questions about whether, in other types of vehicles or engines, E15 may cause durability or operability problems, or increased air

The Honorable Lisa Jackson
July 29, 2010
Page 2

pollution.¹ An organization that includes engine and vehicle manufacturers has warned that fueling certain "non-road and on-road equipment with fuels with ethanol content higher than 10% could cause serious, permanent damage to millions of legacy products, emission-related failures, and increased operating hazards for millions of consumers."² We believe that EPA should not approve the use of E15 until the agency has sufficient test results to allow you to assure consumers that use of E15 will not harm their vehicles or engines.

Congress' desire to balance increased use of renewable fuels with the protection of consumers' vehicles and engines was reflected in the Energy Independence and Security Act of 2007 (EISA). In recognition of the potential benefits of renewable fuels, section 202 of EISA increased the amount of renewable fuel that oil companies must sell, ultimately requiring 36 billion gallons a year in 2022. This was balanced with section 251 of EISA, in which Congress amended section 211(f)(4) of the Clean Air Act such that it prevents the sale of E15 unless the agency makes an affirmative determination that increasing the permissible concentration of ethanol in gasoline would result in a fuel that is compatible with existing cars and trucks, and with non-road equipment (such as boats, lawn mowers, chain saws, etc.). Prior to 2007, under section 211(f)(4), a request to increase the permissible concentration level for ethanol would have been deemed granted unless EPA denied the request within 180 days of its receipt.

Although section 211(f)(4), as amended, requires EPA to make a decision within 270 days of receiving an application, the applicant has the burden of proving compatibility; EPA does not have an obligation in the 270-day period to conduct tests to support the applicant's request. Given the important potential benefits of renewable fuels and the need to protect existing vehicles and engines, we support the Department of Energy's efforts to conduct the necessary compatibility testing and your decision to await those test results.

¹ California's Air Resources Board (CARB) staff warned that two studies with match blended gasoline showed increased NOx emissions from on-road engines with increasing ethanol content. CARB Letter Submitted via Email to the EPA Docket ID No. EPA-HQ-OAR-2009-0211 (July 16, 2009). The Alliance for Automobile Manufacturers, after noting that vehicles "commonly remain in use for over 20 years," stated that two studies raise concerns about durability impacts and that one of these studies showed catalyst deterioration after 50,000 miles. Letter to the Honorable Lisa Jackson, et al., from the Alliance of Automobile Manufacturers (Mar. 31, 2009).

² Alliance for a Safe Alternative Fuels Environment (ALLSAFE) and The Outdoor Power Equipment Institute (OPEI), *Comments before the Environmental Protection Agency on the Notice of Receipt of a Clean Air Act Waiver Application To Increase the Allowable Ethanol Content of Gasoline to 15 Percent*, Docket ID No.: EPA-HQ-OAR-2009-0211 (July 20, 2009) at p. 4.

The Honorable Lisa Jackson

July 29, 2010

Page 3

EPA has said that if E15 is compatible with some vehicles and engines, but not others, EPA may grant a partial approval of E15 (allowing the use of E15 in certain vehicles and engines, but not in others). Assuming that EPA has authority to grant a partial waiver, EPA should have a well-thought-out and well-executed plan for avoiding misfueling. Without appropriate safeguards, a partial approval could pose major problems for consumers with vehicles or engines that are not compatible with E15. Based on the experience with the transition from leaded to unleaded gasoline, a significant amount of accidental or intentional misfueling would be likely.³ If such misfueling led to operability or durability problems, or increased repair costs, a significant number of consumers could be adversely affected. Public perception of problems with a new fuel formulation can cause a backlash against the fuel formulation and government regulation, as was demonstrated by the introduction of reformulated gasoline in several markets.⁴

Allowing the sale of renewable fuel in a way that damages equipment, shortens its life, or requires costly repairs will likely cause a backlash against renewable fuels. It could also seriously undermine the agency's credibility in addressing fuel and engine issues in the future.

To assist the Committee in better understanding these issues, we ask that you answer the enclosed questions.

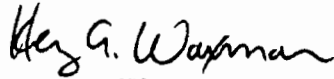
³ In 1982, twelve years after the initial phase-down of leaded gasoline, an EPA study found that 13.5% of the vehicles designed for unleaded fuel were being misfueled with leaded fuel even though vehicles designed for unleaded gasoline had small fuel inlets that did not accommodate the larger diameter pump nozzles used for leaded gasoline. EPA, *Regulation of Fuels and Fuel Additives: Lead Phase Down, Proposed Rule*, 49 Fed. Reg. 31032, 31034 (Aug. 2, 1984).

⁴ Congressional Research Service, *Implementation of the Reformulated Gasoline Program*, CRS Report 95-850 (Aug. 1, 1995).

The Honorable Lisa Jackson
July 29, 2010
Page 4

Please feel free to contact either of us regarding this letter, or have your staff contact Lorie Schmidt of the Committee on Energy and Commerce Majority Staff at 202-225-4407, or Amanda Mertens Campbell of the Committee on Energy and Commerce Minority Staff at 202-225-3641. Thank you for your attention to this matter.

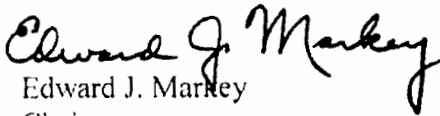
Sincerely,



Henry A. Waxman
Chairman



Joe Barton
Ranking Member



Edward J. Markey
Chairman
Subcommittee on Energy and Environment



Fred Upton
Ranking Member
Subcommittee on Energy and Environment

Enclosure

**QUESTIONS REGARDING THE EFFECT OF E15 ON CONSUMERS' CARS,
TRUCKS, AND OTHER ENGINES**

- (1) For 2007 and later model year passenger vehicles designed to run on gasoline, can you currently assure consumers that E15 will not adversely affect the vehicles' operability, durability, safety, and pollution control equipment?
 - (a) If so, please list the studies or other information that form the basis for your assurance.
 - (b) If not, please describe your current understanding of what effect the use of E15 would have on this group of vehicles.
 - (c) Please describe the testing that the Department of Energy is conducting with respect to E15 usage in 2007 and later model year vehicles.
 - (d) What percent of the existing gasoline-powered passenger vehicle fleet is comprised of 2007 and later model year vehicles?
- (2) For 2001 through 2006 model year passenger vehicles designed to run on gasoline, can you currently assure consumers that E15 will not adversely affect the vehicles' operability, durability, safety, and pollution control equipment?
 - (a) If so, please provide the studies or other information that form the basis for your assurance.
 - (b) If not, please describe your current understanding of what effect the use of E15 would have on this group of vehicles.
 - (c) Please describe the testing that the Department of Energy is conducting with respect to E15 usage in 2001 through 2006 model year vehicles.
 - (d) What percent of the existing gasoline-powered motor vehicle fleet is comprised of 2001 through 2006 model year vehicles?
- (3) For 2000 model year and earlier passenger vehicles designed to run on gasoline, can you currently assure consumers that E15 will not adversely affect the vehicles' operability, durability, safety, and pollution control equipment?
 - (a) If so, please provide the studies or other information that form the basis for your assurance.
 - (b) If not, please describe your current understanding of what effect the use of E15 would have on this group of vehicles.
 - (c) Please describe the testing that the Department of Energy is conducting with respect to E15 usage in 2000 and earlier model year vehicles.
 - (d) What percent of the existing gasoline-powered passenger vehicle fleet is comprised of 2000 and earlier model year vehicles?
- (4) For non-road engines designed to run on gasoline (including boats, lawn mowers, chain saws, and line trimmers), can you currently assure consumers that E15 will not adversely affect the engines' operability, durability, safety, and pollution control equipment?
 - (a) If so, please provide the studies or other information that form the basis for your assurance.
 - (b) If not, please describe your current understanding of what effect the use of E15 would have on non-road engines.

- (c) Please describe any testing that is being conducted with respect to E15 usage in non-road engines.
- (5) Is the testing that the Department of Energy is conducting with respect to E15 sufficient to fully identify the potential risks of increased ethanol blends in vehicles and engines?
- (6) Under what Clean Air Act authority does EPA propose to grant partial, as opposed to universal, approval of E15? In your answer, please explain how EPA interprets the word "any" in section 211(f)(4).
- (7) Before using any study as a basis for any final decision on E15, will you make the study results public and provide an opportunity for comment on them before finalizing your decision? If not, why not?
- (8) If EPA were to permit E15 for use in some vehicles and engines, but not in others, would the warranty be voided if consumers were to use E15 in existing cars, trucks, and non-road engines designed to run on gasoline? In answering this question, please explain whether warranty coverage issues depend on whether EPA has approved a waiver for E15.
- (9) What changes in mileage should a consumer expect for any particular vehicle operated on E15 instead of 100 percent gasoline? Instead of E10?
- (10) If EPA were to grant partial approval of E15, could a state or locality ban the sale of E15? If so, under what circumstances? In your answer, please address the impact of *Rocky Mountain Farmers Union v. Goldstene*, No. CV-F-09-2234 LJO DLB, slip op. (E.D. Cal. June 16, 2010).
- (11) Is EPA developing a plan to avoid (or minimize) misfueling of E15 if EPA were to grant partial approval of E15?
- (a) If so, what is the plan?
 - (b) Will EPA provide public notice and opportunity for comment before finalizing the plan?
 - (c) Will EPA allow the sale of E15 prior to the effective date of such a plan?
 - (d) When Assistant Administrator McCarthy briefed our Committee on the status of the E15 waiver request, she said that the Agency was considering a labeling rule and a public outreach effort to minimize misfueling with E15. Have other options been proposed to EPA? If so, please describe them and state whether they are under consideration.
 - (e) How effective does EPA believe a labeling rule would be in avoiding (or minimizing) misfueling?
- (12) Please describe the extent to which EPA is working with private stakeholders (such as ethanol producers, oil companies, auto manufacturers, engine manufacturers, non-road equipment manufacturers, gas station owners, state and local governments, and

environmentalists) to develop a plan to avoid misfueling of E15 in the event that EPA grants a partial waiver.

- (13) What kind and how many existing gas pumps and tanks can be used for E15 without increasing the risk of leaks or other equipment failure?
 - (a) How many installed tanks and pumps are certified for the use of E15?
 - (b) What are the consequences for gas station owners if they use E15 in a tank or pump that is not certified for E15?
- (14) In section 209 of the EISA, Congress gave EPA 18 months to complete a study of the air quality effects of meeting the renewable fuel standard contained in that law. When will EPA complete that study?
- (15) Please describe the effect of E15 on vehicle and engine evaporative and tailpipe emissions of volatile organic compounds, nitrogen oxides, and air toxics for each of the following types of vehicles and engines:
 - (a) 2007 and later model year cars and trucks designed to operate on gasoline.
 - (b) 2001 through 2006 model year cars and trucks designed to operate on gasoline.
 - (c) 2000 model year and earlier cars and trucks designed to operate on gasoline.
 - (d) non-road engines and vehicles designed to operate on gasoline.
- (16) Has EPA conducted any modeling to determine whether an approval of E15 would affect states' abilities to attain and maintain the national ambient air quality standards?
 - (a) If so, what does the modeling show?
 - (b) If not, does EPA plan to conduct such modeling?



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 17 2010

OFFICE OF
AIR AND RADIATION

The Honorable Edward Markey
Chairman
Subcommittee on Energy and Environment
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515-6115

Dear Mr. Chairman:

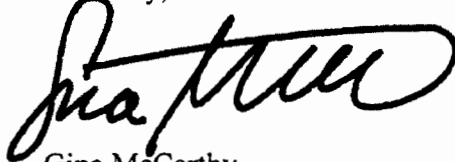
Thank you for your letter of July 29, 2010, co-signed by three of your colleagues, to Administrator Lisa P. Jackson regarding a pending waiver request to allow up to 15 percent ethanol in gasoline (E15). In your letter, you posed a series of questions for the Environmental Protection Agency (EPA) to answer to assist your committee in better understanding the issues surrounding the E15 waiver request. We have provided responses to your questions in the enclosed document.

The Department of Energy has told EPA that, by the end of September, DOE testing on newer vehicles (2007 and newer vehicles) will be complete. EPA plans to take action on the waiver request for those vehicles at that time. If DOE's test results support E15, then EPA will also propose a labeling rule on fuel dispensing equipment. DOE has told EPA that, in November, DOE testing on vehicles covering the 2001 through 2006 model years will also be complete. EPA will then be able to make a further determination on the use of E15 for those vehicles. Our Office of Underground Storage Tanks will also be providing guidance to help ensure that E15 is only stored in suitable underground storage tank systems.

Based on DOE's test program results and other information submitted to the Agency as part of the public record for the E15 waiver request, our forthcoming fuel pump labeling proposal, and underground storage tank outreach and guidance, we believe we are taking the necessary and appropriate actions to promote E15 awareness and ensure an effective market transition should a waiver be approved.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Diann Frantz in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3668.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy", with a large, sweeping flourish at the end.

Gina McCarthy
Assistant Administrator

Enclosure

RESPONSES TO QUESTIONS REGARDING THE EFFECT OF E15 ON CONSUMERS' CARS, TRUCKS, AND OTHER ENGINES

- 1) For 2007 and later model year passenger vehicles designed to run on gasoline, can you assure consumers that E15 will not adversely affect the vehicle's operability, durability, safety, and pollution control equipment?**
 - a) If so, please list the studies or other information that form the basis for your assurance.**
 - b) If not, please describe your current understanding of what effect the use of E15 would have on this group of vehicles.**
 - c) Please describe the testing that the Department of Energy is conducting with respect to E15 usage in 2007 and later model year vehicles.**
 - d) What percent of the existing gasoline-powered passenger vehicle fleet is comprised of 2007 and later model year vehicles?**

Under the Clean Air Act (CAA) section 211(f)(4), the Administrator may waive the "substantially similar" prohibition of section 211(f)(1) if a waiver applicant has established that a fuel or fuel additive, and the emission products of such fuel or fuel additive, "will not cause or contribute to a failure of any emission control device or system (over the useful life of the motor vehicle, motor vehicle engine, nonroad equipment, engine or vehicle in which such device or system is used) to achieve compliance by the vehicle or engine with the emission standards to which it has been certified pursuant to sections 206 and 213(a) of the Act." This provision limits EPA's discretion in making a waiver decision to consider only the effect of a fuel or fuel additive on compliance with emissions standards. Thus EPA considers the effect of a fuel or fuel additive on operability, durability, safety, and pollution control equipment to evaluate the impact on compliance with the emissions standards. For the E15 waiver proceeding, EPA is in the process of evaluating these and other issues, to determine whether the applicant has established that E15 would not cause or contribute to violations of emissions standards. Until EPA makes a final decision on the waiver, we are not in a position to provide a further answer to your questions. The waiver decision itself will address your question with respect to the impact of E15 on compliance with emissions standards.

The Department of Energy (DOE) has indicated that they will deliver the results of complete testing on a fleet of "Tier 2" vehicles (representing Model Year (MY) 2007 and newer light-duty vehicles and trucks and medium duty passenger vehicles like SUVs) by the end of September 2010. The purpose of DOE's test program is to evaluate the long term effects of E0 and E15 on motor vehicle catalyst system durability. The test program consists of 19 vehicle models that have been aged on different fuels and emissions tested at various points during the test program. Vehicles from model year 2007 and later represent nearly 30 percent of the motor vehicle fleet.

- 2) For 2001 through 2006 model year passenger vehicles designed to run on gasoline, can you assure consumers that E15 will not adversely affect the vehicle's operability, durability, safety, and pollution control equipment?**
 - a) If so, please list the studies or other information that form the basis for your assurance.**

- b) If not, please describe your current understanding of what effect the use of E15 would have on this group of vehicles.
- c) Please describe the testing that the Department of Energy is conducting with respect to E15 usage in 2001 through 2006 model year vehicles.
- d) What percent of the existing gasoline-powered motor vehicle fleet is comprised of 2001 through 2006 model year vehicles?

Please see the first paragraph of the response to Question 1, above.

DOE has indicated that its testing on MY 2001 through 2006 motor vehicles will be complete in November 2010. This smaller test program is looking at eight vehicles between MY 2000-2003. All of these vehicles were purchased after significant mileage had been put on them by their prior owners. These vehicles are being emissions tested at various mileage points and run on different fuels as mileage accumulates. Vehicles in model years 2001-2006 cover roughly 38 percent of the motor vehicle fleet.

- 3) For 2000 model year and earlier passenger vehicles designed to run on gasoline, can you assure consumers that E15 will not adversely affect the vehicle's operability, durability, safety, and pollution control equipment?
 - a) If so, please list the studies or other information that form the basis for your assurance.
 - b) If not, please describe your current understanding of what effect the use of E15 would have on this group of vehicles.
 - c) Please describe the testing that the Department of Energy is conducting with respect to E15 usage in 2000 and earlier model year vehicles.
 - d) What percent of the existing gasoline-powered passenger vehicle fleet is comprised of 2000 and earlier model year vehicles?

Please see the first paragraph of the response to Question 1, above.

DOE is not doing any testing that would substantively address technical questions about the impact on emissions of higher ethanol blends on the MY2000 and earlier vehicle fleet. MY 2000 and older motor vehicles represent roughly one-third of the light-duty motor vehicle fleet.

- 4) For non-road engines designed to run on gasoline (including boats, lawn mowers, chain saws, and line trimmers), can you currently assure consumers that E15 will not adversely affect the vehicle's operability, durability, safety, and pollution control equipment?
 - a) If so, please provide the studies or other information that form the basis for your assurance.
 - b) If not, please describe your current understanding of what effect the use of E15 would have on non-road engines.
 - c) Please describe any testing that is being conducted with respect to E15 usage in non-road engines.

Please see the first paragraph of the response to Question 1, above.

We are not aware of any significant or substantive emissions testing being done to determine the effects of higher ethanol blends on nonroad engines.

5) Is the testing that the Department of Energy is conducting with respect to E15 sufficient to fully identify the potential risks of increased ethanol blends in vehicles and engines?

We believe that the test program being conducted by DOE on Tier 2 vehicles will help evaluate compliance with emissions standards and is a significant part of the information the Agency will use to make a decision on the waiver. There is no other test program underway of this size and scope that is developing data looking at vehicle exhaust durability issues and this test program will provide significant data. The Agency will use the information generated from this program as well as any other information before it, including our engineering judgment, to base our decision on whether to allow introduction of E15 into commerce for use in certain vehicles and engines.

6) Under what Clean Air Act authority does EPA propose to grant partial, as opposed to universal, approval of E 15? In your answer, please explain how EPA interprets the word "any" in section 211(f)(4).

Section 211(f)(4) requires that a manufacturer demonstrate that a fuel or fuel additive will not cause or contribute to the failure of "any emission control device or system ... to achieve compliance by the vehicle or engine with the emission standards over its useful life. This provision provides EPA the discretion to consider whether a subset of motor vehicles would meet this requirement, i.e. to evaluate whether the applicant has demonstrated for a subset of motor vehicles that the fuel or fuel additive will not cause any of the vehicles in the subset to fail to achieve compliance with the applicable emissions standards. If so, EPA could grant a waiver of the substantially similar prohibition in relation to that subset of vehicles, which would allow the fuel or fuel additive to be introduced into commerce but only for use in the subset of vehicles. In exercising its discretion, EPA would also consider appropriate conditions on the waiver to ensure that the fuel was in fact introduced into commerce for use in just that subset of vehicles.

7) Before using any study as a basis for any final decision on E15, will you make the study results public and provide an opportunity for comment on them before finalizing your decision? If not, why not?

The Agency provided an opportunity to review and comment on the waiver application and the data submitted as part of the application. We continue to submit data and information provided to us to the docket for the E15 waiver request. Data and information used in our waiver decision are already publicly available through the docket or will be prior to the time of the decision. We believe there is significant information about the test programs and other associated information in the docket. Additionally, EPA continues to receive information in the docket and consistent

with current practice we will review it to the greatest extent possible before making any final decisions on the waiver application.

- 8) If EPA were to permit E15 for use in some vehicles and engines, but not in others, would the warranty be voided if consumers were to use E15 in existing cars, trucks, and non-road engines designed to run on gasoline? In answering this question, please explain whether warranty coverage issues depend on whether EPA has approved a waiver for E15.**

Vehicles are covered by limited emissions warranties required by the Clean Air Act. Additionally, many if not all manufacturers offer additional performance warranty coverage. A key consideration in the applicability of CAA emissions warranties is the maintenance and operational history (use) of the vehicle. The use of fuel is a factor in determining whether a vehicle has been properly maintained and used. Emissions warranty coverage is determined in large part on case-by-case determinations made by automobile or equipment dealers working in conjunction with their respective manufacturers. The use of a fuel that is not "proper maintenance or use" and the impact of that fuel on the emission-related part or system is an important factor in determining whether the CAA emissions warranties have been breached.

- 9) What changes in mileage should a consumer expect for any particular vehicle operated on E15 instead of 100 percent gasoline? Instead of E10?**

As ethanol has a lower energy density than gasoline, ethanol blends will result in lower fuel economy than 100% gasoline (E0). Some studies have measured the specific fuel economy impact of ethanol blends. For example, DOE's first report (updated in February 2009) on the Effects of Intermediate Ethanol Blends on Legacy Vehicles and Small Non-Road Engines showed E0 to E10 decreased fuel economy by 3.68% and E0 to E15 decreased fuel economy by 5.34%.

- 10) If EPA were to grant partial approval of E15, could a state or locality ban the sale of E15? If so, under what circumstances? In your answer, please address the impact of Rocky Mountain Farmers Union vs. Goldstene, No. CV-F-09-2234 LJO DLB, slip op. (E.D. Cal. June 16, 2010).**

Whether a state or locality could ban the sale of E15 depends among other things on issues of preemption under the Clean Air Act. There is an express preemption provision in section 211(c)(4)(A) that applies under certain circumstances. In addition to this express preemption provision, issues of implied or conflict preemption can arise. Whether any specific state or locality fuel provision is preempted under the CAA usually depends on the circumstances of the specific state or local fuel control at issue. The case you refer to, Rocky Mountain Farmers Union vs. Goldstene, No. CV-F-09-2234 LJO DLB, slip op. (E.D. Cal. June 16, 2010), involves a claim that California's Low Carbon Fuel Standard is preempted under the CAA and violates the Commerce Clause. The opinion was a decision on California's motion to dismiss certain claims on the pleadings. As such, the issues before the court were only whether claims had been properly plead, not the actual merits of the claims. The District Court ruled that the plaintiff had properly pled a claim of conflict preemption, and rejected certain legal arguments by California.

The court did not make a decision on the merits of whether California's fuel provision is actually preempted. The opinion on this motion, among other things, highlights the importance of the specifics of a state or local provision in evaluating issues of preemption.

11) Is EPA developing a plan to avoid (or minimize) misfueling of E15 if EPA were to grant partial approval of E15?

- a) If so, what is the plan?
- b) Will EPA provide public notice and opportunity for comment before finalizing the plan?
- c) Will EPA allow the sale of E15 prior to the effective date of such a plan?
- d) When Assistant Administrator McCarthy briefed our Committee on the status of the E15 waiver request, she said that the Agency was considering a labeling rule and a public outreach effort to minimize misfueling with E15. Have other options been proposed to EPA? If so, please describe them and state whether they are under consideration.
- e) How effective does EPA believe a labeling rule would be, in avoiding (or minimizing) misfueling?

We are developing a proposed rule (with opportunity for public notice and comment) to require actions to mitigate the potential for misfueling. The rulemaking proposal is expected to include fuel pump labeling requirements and other measures that address potential misfueling conditions. We are also asking for comment on a range of other options. For example, some stakeholders have put forth the idea of different fuel nozzles for different blends or the use of full-service gas lanes across the country or requiring the presence of attendants at gasoline service stations to help ensure customers are using the appropriate fuel. While there is no realistic way to avoid all potential misfueling in any program, we believe that the rule measures if adopted will help mitigate the potential for misfueling.

The question of whether to allow the fuel manufacturer to introduce E15 into commerce prior to the effective date of the final rulemaking is currently being reviewed and will be addressed as part of the waiver decision. The practical effect of the rule provisions and timing of it and other local, state and federal actions related to bringing E15 to market is that we believe it is highly unlikely that E15 will be introduced before the labeling rule's effective date.

12) Please describe the extent to which EPA is working with private stakeholders (such as ethanol producers, oil companies, auto manufacturers, engine manufacturers, non-road equipment manufacturers, gas station owners, state and local governments, and environmentalists) to develop a plan to avoid misfueling of E15 in the event that EPA grants a partial waiver.

We have had a number of discussions with all stakeholders (ethanol producers, refiners, service station representatives, environmental groups, states, automobile manufacturers, and engine and equipment makers) to discuss the technical issues associated with our pending waiver decision

and associated labeling rulemaking. Moreover, some stakeholders have direct involvement in the test programs being conducted to evaluate the effects of E15 on vehicles and engines.

13) What kind and how many existing gas pumps and tanks can be used for E15 without increasing the risk of leaks or other equipment failure?

- a) How many installed tanks and pumps are certified for the use of E15?**
- b) What are the consequences for gas station owners if they use E15 in a tank or pump that is not certified for E15?**

EPA regulates underground storage tank (UST) systems which contain petroleum or hazardous substances. USTs storing E15 would therefore be subject to EPA's UST requirements. Under a partial waiver, tank owners would not be required to store E15. However, if a tank owner chose to store blends of ethanol above 10 percent (up to and including E15), he or she would need to comply with EPA's UST requirements. We do not have data on how many UST systems would be fully compatible with E15. However, we are currently drafting guidance to help tank owners determine whether their UST system equipment would be compatible with ethanol blends greater than 10 percent, and intend to solicit public comment on it. Our UST requirements pertain to storage tanks, piping, and ancillary equipment that are below ground. Dispensers are not considered part of an UST system and are outside of EPA's authority.

14) In Section 209 of the EISA, Congress gave EPA 18 months to complete a study of the air quality effects of meeting the renewable fuel standard contained in that law. When will EPA complete that study?

On March 26, 2010, EPA completed the rulemaking to implement the RFS2 program as defined by the Energy Independence and Security Act (EISA). As part of this rulemaking effort, EPA performed analyses that provide preliminary information on the emissions and air quality impacts of increasing the volume of renewable fuels across the country by 2022. These assessments were primarily based on the increased use of E10 and E85. In parallel we have been carrying out some of the long lead-time work needed to perform the anti-backsliding analysis required by Section 209 of EISA, such as vehicle testing to quantify the impacts of fuel changes in modern vehicles. We are now in the process of assessing the possible control measures to offset the increases in ozone and/or particulate matter that are expected to result from the increased use of renewable fuels required by EISA and in response to the May 21, 2010 Presidential Memorandum directive. We will incorporate the results of our analysis under the section 209 assessment in the proposal on new vehicle and fuel control measures.

15) Please describe the effect of E15 on vehicle and engine evaporative and tailpipe emissions of volatile organic compounds, nitrogen oxides, and air toxics for each of the following types of vehicles and engines:

- a) 2007 and later model year cars and trucks designed to operate on gasoline.**
- b) 2001 through 2006 model year cars and trucks designed to operate on gasoline.**
- c) 2000 model year and earlier cars and trucks designed to operate on gasoline**
- d) non-road engines and vehicles designed to operate on gasoline.**

Emissions information will be part of the waiver decision.

- 16) Has EPA conducted any modeling to determine whether an approval of E15 would affect states' abilities to attain and maintain the national ambient air quality standards?**
- a) If so, what does the modeling show?**
 - b) If not, does EPA plan to conduct such modeling?**

As stated earlier, we looked at the air quality impact of the use of E10 and E85 as part of the RFS2 final rulemaking. Based on the results of our analyses, the RFS2 final rule would result in 138 million metric tons fewer carbon dioxide-equivalent greenhouse emissions. The increased use of renewable fuels will also impact criteria air pollutants with some emissions such as hydrocarbons, nitrogen oxides (NOx), acetaldehyde and ethanol expected to increase, and others such as carbon monoxide (CO) and benzene expected to decrease. However, the impacts of these emissions on criteria air pollutants are highly variable from region to region. EPA will be analyzing the air quality impacts of increased renewable fuel use, including E15, through the anti-backsliding study required by Section 209 of EISA.

EARL BLUMENAUER, OREGON
JAY INSLEE, WASHINGTON
JOHN B. LARSON, CONNECTICUT
STEPHANIE HERSETH SANDLIN, SOUTH DAKOTA
EMANUEL CLEAVER, MISSOURI
JOHN J. HALL, NEW YORK
JOHN SALAZAR, COLORADO
JACKIE SPEIER, CALIFORNIA

F. JAMES SENSENBRENNER, JR., WISCONSIN
RANKING MEMBER
JOHN B. SHADEGG, ARIZONA
CANDICE MILLER, MICHIGAN
JOHN SULLIVAN, OKLAHOMA
MARSHA BLACKBURN, TENNESSEE
SHELLEY CAPITO, WEST VIRGINIA

ONE HUNDRED ELEVENTH CONGRESS
Select Committee on
Energy Independence and Global Warming
U.S. House of Representatives
Washington, DC 20515

EDWARD J. MARKEY, MASSACHUSETTS
CHAIRMAN
July 21, 2009

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Jackson:

I am writing to inquire regarding the status of waste coal-fired electricity generating units under the Clean Air Act. In particular, I am writing to more fully explore the status of waste coal electricity units under the upcoming Clean Air Interstate Rule. I am also seeking information regarding any environmental benefits that may result from the removal of waste coal piles as potential sources of ground and surface water contamination.

Coal today is a large component of our energy supply, and that is likely to continue for some period of time. Because coal will likely remain a key part of our energy mix in the years ahead, it is imperative that we continue to explore actively ways in which to reduce environmental effects from coal production and use in the United States.

Waste coal units utilize waste coal, which is often stored in piles outside of abandoned coal mines and which, if left unmanaged, can pose a significant threat to the local environment. Runoff from such waste coal piles could contain pollution, including heavy metals, such as mercury, which are found in coal. Preventing the contamination of surface and groundwater from such coal piles is an important environmental consideration. If the waste coal in such piles is utilized as a source of power, the threat to groundwater and surface water could be removed, or substantially mitigated. Of course, under the Clean Air Act the EPA regulates other environmental consequences of burning coal, whether waste coal or newly mined, and I share your commitment to rigorously enforcing those provisions.

Under the 1990 Clean Air Act Amendments, waste coal units (and other units) with an independent power purchase agreement in place prior to November 15, 1990 are exempted under the acid rain provisions of the 1990 Clean Air Act Amendments, for the duration of the power purchase agreement. This exemption was designed to ease

transition of such facilities into the acid rain program. During the time that such power purchase agreements are in place, exempted facilities may also opt-in to the acid rain program and receive free SO₂ allowances for the duration of the power purchase agreement, many of which are coming to term. However, as such power purchase agreements expire, these units will become subject to both the acid rain provisions and to any provisions put in place as part of the process for the Clean Air Interstate Rule. I am interested in how the applicability of these provisions may affect the economic viability of such units.

Please provide the following information:

- 1) What is the status of waste coal piles with regard to state and federal environmental requirements designed to protect surface and groundwater?
- 2) Absent removal of waste coal by waste coal units, how is the run-off from such piles controlled?
- 3) Please provide any information that you have regarding the number and size of existing waste coal piles, and the nature, quantity and extent of any surface and groundwater contamination from such piles.
- 4) Does use/removal of these waste coal piles provide a substantial environmental benefit, strictly from the perspective of protecting ground and surface water?
- 5) How will the applicability of upcoming Clean Air Act regulations, including reinstatement and revision of the Clean Air Interstate Rule, affect the economic viability of waste coal-burning electricity generating units whose long term purchase power agreements have expired?
- 6) Will such units remain economically viable under these rules?
- 7) What analysis supports your conclusions in this area?

Thank you for your attention to this matter. The Select Committee would appreciate receiving a response to this request within 60 days. If you have any questions please feel to contact Michael Goo or Jonathan Phillips of my staff at 202-225-4012.

Sincerely,



Edward J. Markey
Chairman



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 21 2009

OFFICE OF
AIR AND RADIATION

The Honorable Edward J. Markey
Chairman
Select Committee on Energy Independence and Global Warming
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Markey:

Thank you for your letter dated July 21, 2009, to Administrator Lisa P. Jackson, regarding the status of waste coal-fired units under the rule that will replace the remanded Clean Air Interstate Rule (CAIR), and about waste coal piles as potential sources of ground and surface water contamination. I am pleased to respond on her behalf.

In your letter, you were specifically interested in waste coal units with independent power purchase agreements in place prior to November 15, 1990. Coal units with such purchase agreements were exempted from requirements under the acid rain provisions of the 1990 Clean Air Act Amendments for the duration of the power purchase agreement.

As you have pointed out, now that many of the power purchase agreements are coming to an end, these coal units will now become subject to the acid rain requirements under the Clean Air Act and to any requirements that are put in place under a revised CAIR. The Agency is now looking at options that respond to the D.C. Circuit Court of Appeals' July 11, 2008, decision to vacate CAIR and then on December 23, 2008 to remand CAIR. Until that rule is final, it is difficult to determine the effect it will have on the economic viability of these coal units. Enclosed you will find our responses to your specific questions concerning these issues.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Diann Frantz in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3668.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy", is written over the typed name.

Gina McCarthy
Assistant Administrator

Enclosure

ENCLOSURE

1) *What is the Status of waste coal piles with regard to state and federal environmental requirements designed to protect surface and groundwater?*

Waste coal piles, as a relic feature of abandoned mining operations, are addressed by Federal requirements under the Department of Interior, Office of Surface Mining (OSM). The Surface Mining Control and Reclamation Act of 1977 (SMCRA) is the primary federal law that regulates the environmental effects of coal mining in the United States. SMCRA created two programs: one for regulating active coal mines and a second for reclaiming abandoned mine lands. SMCRA also created the Office of Surface Mining to promulgate regulations, to fund state regulatory and reclamation efforts, and to ensure consistency among state regulatory programs.

There is a Federal database maintained by OSM called AMLIS (<http://www.osmre.gov/aml/AMLIS/AMLIS.shtml>) that tracks information on Abandoned Mine Lands (AML). Using this database, an inventory of land and water impacted by past mining (primarily coal mining) can be obtained, along with specific information on the location, type, and extent of AML impacts (including the kind of AML feature, e.g., refuse piles, dangerous highwalls, impoundments), and information on the cost associated with the reclamation of those problems. The inventory is based upon field surveys by State, Tribal, and OSM program officials. It is dynamic to the extent that it is modified as new problems are identified and existing problems are reclaimed.

OSM issues an annual report, which includes discussion of each State's AML program, including Government Financed Construction Contracts (GFCCs), where waste coal piles are removed for fuel and the areas are reclaimed at no cost to the state.

2) *Absent removal of waste coal by waste coal units, how is the run-off from such piles controlled?*

Regulatory framework for the control of surface runoff and the prevention of contamination to ground water supplies is largely governed by OSM and the SMCRA regulations. EPA's jurisdiction over drainage controls on surface mining sites is governed largely by the Clean Water Act NPDES permitting program under section 402. NPDES permits will be required from initiation of mining until the site is fully remediated. In addition, section 404 Program provides protection/mitigation of wetlands and state water quality certifications under Section 401 provide an additional opportunity to ensure that Federal activities comply with state Water Quality Standards.

3) *Please provide any information that you have regarding the number and size of existing waste coal piles, and the nature, quantity and extent of any surface and groundwater contamination from such piles.*

Since placement and permitting of waste coal piles is regulated by OSM rather than EPA, we do not currently have information on the number and size of existing piles. As indicated above, most of the State Programs have been delegated the authority to regulate mining operations, and

those agencies will have databases regarding the number and size of waste coal piles.. Information compiled by the states is incorporated into OSM annual reports for each state. Below are listed state specific contacts and information for Region III States. If there are other states for which you would like information, please let us know.

Pennsylvania: Contact William S. Allen Jr., Chief, Division of Monitoring and Compliance, Bureau of Mining and Reclamation. Phone: 717-783-9580, email: wallen@state.pa.us

Virginia: Contact Richard V. Davis, Reclamation Inspector, Abandoned Mine Land, Commonwealth of Virginia, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, Phone: 276-523-8216, email: rvd@mme.state.va.us

Maryland: Contact Mike Garner, Water Resources Engineer, Maryland Department of the Environment, Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532 Phone: 301 689-1460, email: mgarner@mde.state.md.us

West Virginia: Contact: Danny Pritz Phone: 304-926-0499 extension 1477 or Eric Coberly, Phone: 304-926-0499

4) Does use/removal of these waste coal piles provide a substantial environmental benefit, strictly from the perspective of protecting ground and surface water?

While EPA does not currently have information regarding impacts specifically from coal piles, we expect that their removal would provide a reduction in pollutants loading and afford an improvement in water quality. A number of state programs promote incentives for companies to re-mine abandoned mine sites, as funding for the reclamation of these lands are limited compared to the large extent of pre-SMCRA mining sites and pollutant contributions these sites make to the environment. States with a long history of mining operations especially suffer from the effects of acid mine drainage, groundwater contamination and subsidence caused by early pre-law surface and underground mining.

5) How will the applicability of upcoming Clean Air Act regulations, including reinstatement and revision of the Clean Air Interstate Rule, affect the economic viability of waste coal-burning electricity generating units whose long term purchase power agreements have expired?

EPA is continuing to evaluate options for a rule to replace the Clean Air Interstate Rule (CAIR). We are carefully weighing a range of alternative proposals, including market based approaches, and are aiming to propose a rule in early 2010. This proposal will include one or more options; any proposed options will be consistent with the Court's July 11, 2008 decision. We expect to complete the rule in 2011. Because we are still evaluating a range of options, we cannot provide any information on how a rule might specifically impact the waste coal industry. It is worth noting that EPA, in a Technical Support Document for the Clean Air Interstate Rule Federal Implementation Plans FIP (<http://www.epa.gov/cair/pdfs/0076-0224.pdf>), specifically analyzed the impact of the original CAIR on waste coal and determined that the rule would not have significant impact on waste coal. EPA's analysis was based on a combination of publically available data and all of the data that commenters provided to support the assertion that the rule would significantly impact waste coal.

6) Will such units remain economically viable under these rules?

Please see response to question 5.

7) What analysis supports your conclusions in this area?

Please see response to question 5.

AL-09-000-0597

COMMITTEES
ENERGY AND COMMERCE
SUBCOMMITTEE ON
TELECOMMUNICATIONS AND
THE INTERNET
CHAIRMAN
SELECT COMMITTEE ON
ENERGY INDEPENDENCE AND
GLOBAL WARMING
CHAIRMAN
HOMELAND SECURITY
NATURAL RESOURCES

EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS

Congress of the United States
House of Representatives
Washington, DC 20515-2107

January 13, 2009

2108 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2107
(202) 225-2836

DISTRICT OFFICES:

5 HIGH STREET, SUITE 101
MEDFORD, MA 02155
(781) 396-2900

188 CONCORD STREET, SUITE 102
FRAMINGHAM, MA 01702
(508) 875-2900

<http://markey.house.gov>

Mr. Stephen Johnson
Administrator
Environmental Protection Agency
1300 Pennsylvania Avenue N.W.
Washington, DC

Dear Administrator Johnson:

I write to request information related to the regulation of the bi-products associated with coal-burning power plants.

As you know, a coal ash pond owned by the Tennessee Valley Authority (TVA) ruptured last month, and a billion gallons of toxic sludge were spread over 300 acres in East Tennessee. The sludge contains many heavy metals such as arsenic and other toxic substances that, upon exposure, can lead to cancer, birth defects and the destruction of ecosystems and animal populations.

However, despite the health and environmental risks these materials can pose, recent press reports indicate that they go largely unregulated and unmonitored. A 2007 EPA study evidently found there were at least 63 sites in 26 States where the water was contaminated by heavy metals that had leached out of the materials. Yet despite the widespread existence of these sites and the widespread identification of contamination caused by them, there is no national policy in place to ensure that the health and safety of the surrounding communities is protected.

This is unacceptable, and I intend to remedy the problem. Accordingly, I ask for your prompt assistance in responding to the following questions:

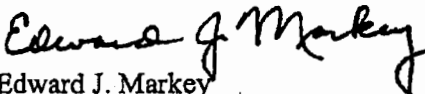
1. Does EPA believe that coal ash and/or other bi-products associated with coal-burning power plants should be designated a hazardous waste? If not, why not? If so, why has it not already done so? Please provide copies of all EPA studies, memos, draft proposals and other correspondence related to any deliberations associated with such a designation, or alternate approaches to regulating these materials.
2. Does EPA believe that it has sufficient legal authority under existing environmental statutes to regulate coal ash, heavy metals, and other hazardous wastes associated with coal-burning power plants? If so, why hasn't EPA used

this authority? If not, what changes in the law would be needed to give EPA the authority to protect public health and the environment from these wastes?

3. If coal ash and/or other bi-products associated with coal-burning power plants was designated as a hazardous waste, please detail the potential regulatory steps that would follow such a designation.
4. Has EPA examined the manner in which these materials are stored? For example, last month's accident occurred in a storage *pond*. Given the dangers these materials particularly pose to the surrounding water system, has EPA considered the wisdom of allowing them to be stored in this manner in the first place? Please provide copies of all EPA studies, memos, draft proposals and other correspondence related to any deliberations associated with the regulation of the types of facilities that can be used to store these materials.

Thank you very much for your consideration of this important matter. Please provide your responses no later than Friday January 30, 2009. If you have any questions or concerns, please have your staff contact Dr. Michal Freedhoff of my staff at 202-225-2836.

Sincerely,


Edward J. Markey



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 30 2009

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Edward J. Markey
Chairman
Committee on Energy and Commerce
Subcommittee on Energy and Environment
U.S. House of Representatives
Washington D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of January 13, 2009, to the U.S. Environmental Protection Agency's (EPA's) former Administrator Stephen L. Johnson requesting information related to the regulation of the bi-products associated with coal-burning power plants.

EPA respects your role as Chairman and is committed to providing the Subcommittee with information necessary to satisfy its oversight activities to the extent possible, consistent with Constitutional and statutory obligations. We are coordinating with various offices and working diligently to identify, assemble, and review the documents and information requested in your letter. However, because of the extensive information requested, we will need additional time to fully respond to your questions. In the meantime, we are coordinating with your staff to provide a briefing to share information on this issue.

Again, let me assure you that we are working to respond to your request as expeditiously as possible. If you have further questions, please contact me or your staff may contact Amy Hayden in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0555.

Sincerely,

A handwritten signature in black ink, which appears to read "Joyce K. Frank". The signature is fluid and cursive.

Joyce K. Frank
Acting Associate Administrator

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

September 24, 2009

The Honorable Peter S. Silva
Assistant Administrator for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Ariel Rios Building, Mail Code 4101M
Washington, DC 20460

Dear Mr. Silva:

I am writing to request your testimony at a legislative hearing before the Subcommittee on Energy and Environment on Thursday, October 1, 2009, at 10:00 a.m. in Room 2123 of the Rayburn House Office Building. The hearing will examine the Chemical Facility Anti-Terrorism Act of 2009 (H.R. 2868) and the Drinking Water System Security Act of 2009 (H.R. 3258). I ask that your testimony focus on both the Drinking Water System Security Act of 2009 and on the manner in which EPA will coordinate its efforts with the Department of Homeland Security. The attachment to this letter provides information about testifying before the Committee. If you have any questions, please contact Alison Cassady with the Committee staff at (202) 226-2424 or Michal Freedhoff with Rep. Markey's office at (202) 225-2836.

Sincerely,



Edward J. Markey
Chairman
Subcommittee on Energy and
Environment

Enclosure

cc: The Honorable Henry A. Waxman
Chairman

The Honorable Joe Barton
Ranking Member

The Honorable Fred Upton
Ranking Member
Subcommittee on Energy and
Environment

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOHN D. DINGELL, MICHIGAN
CHAIRMAN EMERITUS
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
FRANK PALLONE, JR., NEW JERSEY
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
ANNA G. ESHOO, CALIFORNIA
BART STUPAK, MICHIGAN
ELIOT L. ENGEL, NEW YORK
GENE GREEN, TEXAS
DIANA DEGETTE, COLORADO
VICE CHAIRMAN
LOIS CAPPS, CALIFORNIA
MIKE DOYLE, PENNSYLVANIA
JANE HARMAN, CALIFORNIA
JAN SCHAKOWSKY, ILLINOIS
CHARLES A. GONZALEZ, TEXAS
JAY INSLEE, WASHINGTON
TAMMY BALDWIN, WISCONSIN
MIKE ROSS, ARKANSAS
ANTHONY D. WEINER, NEW YORK
JIM MATHESON, UTAH
G. K. BUTTERFIELD, NORTH CAROLINA
CHARLIE MELANCON, LOUISIANA
JOHN BARROW, GEORGIA
BARON P. HILL, INDIANA
DORIS O. MATSUI, CALIFORNIA
DONNA CHRISTENSEN, VIRGIN ISLANDS
KATHY CASTOR, FLORIDA
JOHN SARBANES, MARYLAND
CHRISTOPHER MURPHY, CONNECTICUT
ZACHARY T. SPACE, OHIO
JERRY MCNERNEY, CALIFORNIA
BETTY SUTTON, OHIO
BRUCE BRALEY, IOWA
PETER WELCH, VERMONT

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

MAJORITY (202) 225-2827
FACSIMILE (202) 225-2525
MINORITY (202) 225-3641

energycommerce.house.gov

JOE BARTON, TEXAS
RANKING MEMBER

RALPH M. HALL, TEXAS
FRED LIPTON, MICHIGAN
CLIFF STEARNS, FLORIDA
NATHAN DEAL, GEORGIA
ED WHITFIELD, KENTUCKY
JOHN SHIMMUS, ILLINOIS
JOHN B. SHADEGG, ARIZONA
ROY BLUNT, MISSOURI
STEVE BUYER, INDIANA
GEORGE RADANOVICH, CALIFORNIA
JOSEPH R. PITTS, PENNSYLVANIA
MAHY BOND MACK, CALIFORNIA
GREG WALDEN, OREGON
LEE TERRY, NEBRASKA
MIKE RODGERS, MICHIGAN
SUE WILKINS MYNICK, NORTH CAROLINA
JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA
MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE
PHIL GINGREY, GEORGIA
STEVE SCALISE, LOUISIANA

Witness Information Sheet

The following is a summary of some of the pertinent rules and procedures applicable to witnesses testifying before the Committee on Energy and Commerce:

- Witnesses should provide 150 copies of their written testimony (75 copies for subcommittee hearings) to Earley Green, Chief Clerk, in Room 2125 of the Rayburn House Office Building no later than 10:00 a.m. two business days prior to the hearing. Witnesses should also provide statements by this date in electronic format, either as a CD or via email in .pdf format to earley.green@mail.house.gov.
- At the hearing, each witness will be asked to summarize his or her written testimony in five minutes or less in order to maximize the time available for discussion and questions.
- House Rule XI clause 2(g)(4) requires that witnesses appearing in a nongovernmental capacity submit to the Committee in advance of the hearing "a curriculum vitae and a disclosure of the amount and source (by agency and program) of *each* Federal grant (or subgrant thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness." The attached form and instructions are intended to assist witnesses in complying with this requirement.
- Witnesses with disabilities should contact Committee staff to arrange any necessary accommodations.
- The jurisdiction of the Committee on Energy and Commerce is set forth in House Rule X clauses 1(f), 2, 3(e), and 4(e).
- The Committee rules governing this hearing are online at <http://energycommerce.house.gov/>.

For inquiries regarding these rules and procedures, please contact the Committee on Energy and Commerce at (202) 225-2927.

Committee on Energy and Commerce
U.S. House of Representatives
Witness Disclosure Requirement - "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name:		
1. Are you testifying on behalf of a Federal, State, or local Government entity?	Yes	No
2. Are you testifying on behalf of an entity that is not a Government entity?	Yes	No
3. Please list any Federal grants or contracts (including subgrants or subcontracts) that <u>you personally have received</u> on or after October 1, 2006:		
4. Other than yourself, please list which entity or entities you are representing:		
5. If your answer to the question in item 2 in this form is 'yes,' please list any offices or elected positions held or briefly describe your representational capacity with the entities disclosed in the question in item 4:		
6. If your answer to the question in item 2 is 'yes,' do any of the entities disclosed in item 4 have parent organizations, subsidiaries, or partnerships that you are not representing in your testimony?	Yes	No
7. If the answer to the question in item 2 is 'yes,' please list any Federal grants or contracts (including subgrants or subcontracts) that were received by the entities listed under the question in item 4 on or after October 1, 2006, that exceed 10 percent of the revenue of the entities in the year received, including the source and amount of each grant or contract to be listed:		

Signature: _____ Date: _____

INSTRUCTIONS FOR COMPLETING THE TRUTH-IN-TESTIMONY DISCLOSURE FORM

1. ***In General.*** The form on the reverse side of the page is intended to assist witnesses appearing before the Committee on Energy and Commerce in complying with rule XI, clause 2(g)(4) of the Rules of the House of Representatives. The rule requires that:

In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of any Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness.

Please complete the form in accordance with these directions.

2. ***Name.*** Please provide the name of the witness in the box at the top of the form.
3. ***Governmental Entity (Item 1 on the form).*** Please check the box indicating whether or not the witness is testifying on behalf of a government entity, such as a Federal department or agency, or a State or local department, agency, or jurisdiction. Trade or professional associations of public officials are not considered to be governmental organizations.
4. ***Nongovernmental Entity (Item 2).*** Please check the box indicating whether or not the witness is testifying on behalf of an entity that is not a governmental entity.
5. ***Grants and Contracts (Item 3).*** Please list any Federal grants or contracts (including subgrants or subcontracts) that the witness personally has received from the Federal Government on or after October 1, 2006.
6. ***Entity(ies) to be Represented (Item 4).*** Please list all entities on whose behalf the witness is testifying.
7. ***Representational Capacity (Item 5).*** If the answer to the question in item 2 is 'yes,' please characterize the capacity in which the witness is testifying on behalf of the entities listed in item 4.
8. ***Affiliated Entities (Item 6).*** Please indicate whether the entity on whose behalf the witness is testifying has parent organizations, subsidiaries, or partnerships that are not represented by the testimony of the witness.
9. ***Grants and Contracts (Item 7).*** Please disclose grants and contracts as directed in item 7.
10. ***Submission.*** Please sign and date the form in the appropriate place. Please submit this form with your written testimony. Please note that under the Committee's rules, 150 copies of a written statement of your proposed testimony must be submitted at least two working days before the commencement of the hearing. Please also provide a copy in electronic format, as described in the letter of invitation.

Congress of the United States
House of Representatives
Washington, DC 20515

March 14, 2005

The Honorable Stephen Johnson
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Dear Acting Administrator Johnson:

We are writing to reiterate our concern about the EPA's proposed rule on mercury emissions from power plants. We believe that if the EPA issues this rule without the legally required analyses, the Agency will fail to meet Clean Air Act requirements, threaten the credibility of the EPA as one of the primary guardians of the nation's public health, and put the safety of thousands of Americans at risk.

The EPA's Inspector General and the Government Accountability Office (GAO) recently issued separate reports criticizing the EPA's rulemaking process, on the grounds that it violated EPA policy, OMB guidance, Presidential Executive Orders and, in some instances, important provisions of the Clean Air Act. For example, the GAO report identified severe shortcomings in the technical analysis and modeling underlying the EPA's mercury rule that limits its usefulness for informing decision makers and the general public about the economic trade-offs of the two options that the EPA considered for reducing emissions. Specifically, the GAO report found that:

Because EPA estimates that regulating mercury emissions would have significant economic impacts totaling billions of dollars per year, it is important for the agency to have a credible basis for selecting a policy that will maximize the return on this investment. However, EPA's initial economic analysis of the two policies it is considering has a number of shortcomings. Specifically, because EPA did not analyze and document the economic effects of each policy option by itself—as well as in combination with the interstate rule—over their varying full implementation periods, the results cannot be meaningfully compared. In addition, EPA did not document the analysis supporting the cap-and-trade option or provide consistent information on the economic impacts of different mercury control levels for the two options, limiting the transparency and usefulness of the analysis. Further, without monetary estimates of the human health benefits of mercury emissions reductions—a primary purpose of a mercury regulation—over the full implementation period of each option or, at a minimum, a qualitative comparison of these benefits, EPA's analysis does not provide decision makers with a strong basis for comparing the net benefits under each option. Finally, because EPA did

CC4
Charles
J. [unclear]
[unclear]
Jim W.
[unclear]

not analyze some of the key analytical uncertainties that could affect its estimates of net benefits, the agency could enhance its economic analysis by further evaluating these uncertainties and how they could affect its overall findings (GAO Report 'Clean Air Act: Observations on EPA's Cost-Benefit Analysis of Its Mercury Control Options,' p.16).

As you know, the EPA was permitted to delay finalizing the mercury rule this past December 15th because of widespread concerns about its inadequate technical analysis and modeling - partially for reasons described in the text above. The EPA has responded to continued criticism by promising on numerous occasions to do the technical analyses and modeling necessary to support the mercury rule. For example, upon reading a draft of the GAO report, you subsequently sent a letter to the GAO on February 15, 2005 in which you shared your frustrations about the "time and resource constraints" that hindered the EPA's ability to complete a thorough analysis, but added that the EPA would build on that work as it conducted a final benefit-cost analysis. Also in the letter, you addressed the GAO's concerns that EPA had not provided sufficient information to understand the benefits and costs of alternative approaches to reducing mercury emissions when you stated, "...EPA scientists, engineers, and economists are conducting additional analyses for the final rule, which will help address GAO's concerns."

Despite these assurances, the EPA has not publicly released any additional documents, economic analyses, or alternative scenarios that address the serious deficiencies in its original research - and there is no indication that EPA has in fact conducted the required analysis. We certainly understand that the EPA has many responsibilities, and that the Agency's budget has been significantly reduced over the last few years. However, Members of Congress first wrote to the EPA to express concern over the lack of analysis being performed as part of the mercury rulemaking process in May 2003. We do not believe that "time and resource constraints" explain the EPA's failure to properly analyze and consider a rule that addresses the toxic air pollutant of greatest concern to human health.

The EPA should be well aware of the threat that mercury poses. In January 2004, the EPA found that nearly one in six women of childbearing age has mercury levels in her blood above what is considered safe for an unborn child, doubling the previous estimates to approximately 630,000 newborns each year. Moreover, the EPA announced last August that one third of our nation's lake waters and one-quarter of our riverways are contaminated with mercury and other pollutants that could cause health problems.

The EPA has admitted that its analysis of different policy options for reducing mercury emission is inadequate. We believe this is simply unacceptable. Moreover, we find it particularly troubling that the EPA has failed to make good on promises to correct and improve its analysis necessary to issue a legally defensible regulation. The American people count on the EPA to make certain the food they eat, the water they drink, and the air they breathe is safe for their families. The integrity of the EPA and health of our communities depend on thorough and complete research.

We call on the EPA to issue a final mercury regulation based on valid, thorough, and reliable analysis of the competing proposals that will assure the public that their health will truly be protected.

Sincerely,

Tammy Baldwin

Tom Allen

Hilda L. Solis

Luigi Caputo

Diana DeGette

Jon Schuk

Raul M. Grijalva

Ben Rayburn

Edward J. Markey

Frank Pallone, Jr.

Jim Amodeo

Joe Courtney

Eddie Bernice Johnson

Ernie L. Engele



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 19 2005

OFFICE OF
AIR AND RADIATION

The Honorable Edward J. Markey
U. S. House of Representatives
Washington, DC 20515

Dear Congressman Markey:

Thank you for your letter of March 14, 2005, to Administrator Stephen Johnson, in which you and 13 of your colleagues express strong concern with the Clean Air Mercury Rule (CAMR). I appreciate your interest on this important matter and welcome the opportunity to comment.

On March 15, 2005, the Environmental Protection Agency (EPA) issued the first-ever federal rule to reduce and permanently cap mercury emissions from coal-fired power plants. This rule, known as the Clean Air Mercury Rule, makes the United States the first country in the world to regulate mercury emissions from power plants. The CAMR will build on EPA's Clean Air Interstate Rule (CAIR) to significantly reduce emissions from these plants -- the largest remaining sources of mercury emissions in the country. When fully implemented, these rules will reduce utility emissions of mercury from 48 tons a year to 15 tons, a reduction of nearly 70 percent.

Your letter expresses concern about how EPA is addressing issues raised in reports written by the EPA Inspector General (IG) that commented on the rulemaking process and the Government Accountability Office (GAO) that commented on the economic analysis supporting the rule. Please note that both reports reviewed the proposed rules and the associated analysis that we put out for public comment, not the final rule that we issued on March 15, 2005, and the extensive analysis that accompanied that rule.

The IG report was unusual in that it criticized the rulemaking process as being incomplete when the Agency was still in the middle of the rulemaking process. As you know, EPA develops a proposed rule and publishes it for public comment. Interested parties are then given a period of time in which to submit their comments and any information that they believe is relevant to the rule. After reviewing those comments, the Agency develops and issues a final rulemaking package, in which it responds to the comments that were submitted during the public comment period. The IG report was issued in the middle of this process. The issues raised in the report are largely addressed in the final rulemaking package.

Similarly, the GAO report was issued during the rulemaking process and encouraged EPA to pursue additional economic analysis. We agreed and, in fact, when we received the report we were already in the process of finalizing a number of the analyses the GAO requested or cited as informative. These analyses are part of the supporting documents for the final CAIR and CAMR, which are currently available in the public record.

EPA officials were aware of the intense public interest in this rule, and worked hard to ensure that the process was open and deliberative. All our proposals - from the original proposal, to the supplemental notice, to a notice of data availability - were open for extensive public comment. We received numerous comments on these documents, and those comments helped us as we finalized the rule we issued in March.

Mercury pollution is a global problem and the U.S. is taking a leadership role by being the first country to regulate mercury emissions from power plants. Mercury pollution knows no geographic boundaries; emissions can travel thousands of miles before depositing to land and water. Total U.S. mercury emissions account for just 3 percent of estimated global emissions; coal-fired power plants in the U.S. account for about 1 percent of total mercury emissions worldwide. Despite our small contribution to global mercury air emissions, through the Clean Air Mercury Rule the U.S. is providing world leadership in reducing mercury emissions.

EPA is committed to protecting the environment and the public health of all citizens, especially children. We believe that our regulations provide a technically sound and environmentally beneficial approach to ensuring the continued welfare of the American public and the environment without causing significant disruption to our nation's energy markets. Our coordinated programs will work in concert to reduce emissions of mercury, nitrogen oxides, and sulfur dioxide from the utility sector, and improve air quality and the quality of our lakes, rivers, and coastal waters.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Catherine Sulzer, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-2464.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Holmstead", written in a cursive style.

Jeffrey R. Holmstead
Assistant Administrator

AL-12-001-8237



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 26 2012

THE ADMINISTRATOR

The Honorable Ed Markey
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Markey:

I am pleased to support the charter renewal of the Clean Air Act Advisory Committee in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Clean Air Act Advisory Committee is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Committee will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina J. Moody in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, which appears to read "Lisa P. Jackson", is written over a horizontal line.

Lisa P. Jackson

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

CLEAN AIR ACT ADVISORY COMMITTEE

1. **Committee's Official Designation (Title):**

Clean Air Act Advisory Committee

2. **Authority:**

This charter renews the Clean Air Act Advisory Committee (CAAAC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The CAAAC is in the public interest and supports the Environmental Protection Agency (EPA) in performing its duties and responsibilities under the Clean Air Act Amendments of 1990.

3. **Objectives and Scope of Activities:**

The CAAAC will provide advice, information and recommendations on policy and technical issues associated with implementation of the Clean Air Act Amendments of 1990 (the Act). These issues include the development, implementation, and enforcement of the new and expanded regulatory and market-based programs required by the Act, with the exception of the provisions of the Act that address acid rain. The programs falling under the purview of the committee include those for meeting National Ambient Air Quality Standards, reducing emissions from vehicles and vehicle fuels, reducing greenhouse gas emissions, reducing air toxic emissions, issuing operating permits and collecting fees, and carrying out new and expanded compliance authorities. The CAAAC may advise on issues that cut across several program areas.

The major objectives are to provide advice and recommendations on:

- a. Approaches for new and expanded programs, including those using innovative technologies and policy mechanisms to achieve environmental improvements.
- b. The potential health, environmental, and economic effects of Clean Air Act programs on the public, the regulated community, State and local governments, and other Federal agencies.
- c. The policy and technical contents of proposed major EPA rulemaking and guidance required by the Act in order to help effectively incorporate appropriate outside advice and information.
- d. The integration of existing policies, regulations, standards, guidelines, and procedures into programs for implementing requirements of the Act.

4. Description of Committees Duties:

The duties of the CAAAC are solely to provide advice to EPA.

5. Official(s) to Whom the Committee Reports:

The CAAAC will submit advice and recommendations and report to the EPA Administrator, through the Office of Air and Radiation.

6. Agency Responsible for Providing the Necessary Support:

The EPA will be responsible for financial and administrative support. Within the EPA, this support will be provided by the Office of Air and Radiation.

7. Estimated Annual Operating Costs and Work Years:

The estimated annual operating cost of the CAAAC is \$650,000 which includes 1.5 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the DFO. The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

The CAAAC expects to meet approximately three (3) times a year. Meetings may occur approximately once every four (4) months or as needed and approved by the Designated Federal Officer (DFO). EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the CAAAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of Section 552(b) of Title 5, United States Code. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the CAAAC.

10. Duration and Termination:

The CAAAC will be examined annually and will exist until the EPA determines the committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After this period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

The CAAAC will be composed of approximately forty-five (45) members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from business and industry, academic institutions, State, local and tribal governments, EPA officials, unions, public interest groups, environmental organizations and service groups.

12. Subgroups:

EPA, or the CAAAC with EPA's approval, may form CAAAC subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the CAAAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

October 5, 2012

Agency Approval Date

October 16, 2012

GSA Consultation Date

OCT 26 2012

Date Filed with Congress



**THE SELECT COMMITTEE ON
ENERGY INDEPENDENCE AND GLOBAL WARMING**

April 29, 2008

Dear Mr. Meyers,

Following your appearance in front of the Select Committee on Energy Independence and Global Warming, members of the committee submitted additional questions for your attention. I have attached the document with those questions to this email. Please respond at your earliest convenience, or within 2 weeks. Responses may be submitted in electronic form, at aliya.brodsky@mail.house.gov. Please call with any questions or concerns.

Thank you,
Ali Brodsky

Ali Brodsky
Chief Clerk
Select Committee on Energy Independence and Global Warming
(202)225-4012
Aliya.Brodsky@mail.house.gov

- 1) If the fastest way to reduce emissions is reducing the amount of fuel used, and airlines want to reduce the amount of fuel used to save money – we are already solving this problem through the marketplace, aren't we?
- 2) With regard to the Commercial Aviation Fuels Initiative, can you talk more about how you evaluate fuels to be certain that they meet safety requirements?
- 3) Is there any reason to think that the International Civil Aviation Organization, which is part of the UN, is not capable of working through this issue?
- 4) What do you think is a realistic time frame for developing biofuels to replace current jet fuel on a commercial basis?
- 5) Would you agree that strategies to reduce CO2 emissions can make it more difficult to reduce nitrogen oxide emissions?
- 6) Does the EPA have any authority over airline safety? How about air traffic control efficiency?
- 7) What is EPA's responsibility with regard to noise pollution?



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 19 2008

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Edward J. Markey
Chairman
Select Committee on Energy Independence and Global Warming
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Markey:

Thank you for your letter of April 29, 2008, to Robert Meyers, Principal Deputy Assistant Administrator for EPA's Office of Air and Radiation. Your letter contained seven questions for the record from the April 2, 2008, hearing before the Select Committee on Energy Independence and Global Warming. In addition, we have included responses to two questions asked at the hearing for which Mr. Meyers promised to get back to members of the Committee.

Please find enclosed responses to your questions. I hope this information will be useful to you and the other members of the Committee. If you have any further questions, please contact me or your staff may contact Patricia Haman in my office at (202) 564-2806.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Bliley", written over a horizontal line.

Christopher P. Bliley
Associate Administrator

Enclosure

House Select Committee on Energy Independence and Global Warming
Hearing on Aviation Issues and Global Warming
April 2, 2008

Questions for the Record

1. If the fastest way to reduce emissions is reducing the amount of fuel used, and airlines want to reduce the amount of fuel used to save money – we are already solving this problem through the marketplace, aren't we?

Aircraft fuel efficiency is expected to improve in the future due to technology developments for lighter and more aerodynamic aircraft and more efficient engines. However, technology changes take time and aircraft and aircraft engines operate for about 25 to 30 years. When new aircraft and engines are purchased, there are many factors which go into the decision. Advanced air traffic management and operational measures may be a way to reduce fuel use and GHG emissions in the near term.

2. With regard to the Commercial Aviation Fuels Initiative, can you talk more about how you evaluate fuels to be certain that they meet safety requirements?

FAA has the primary responsibility to assess fuels to ensure they comply with emission and safety requirements. In addition, under current law, the FAA prescribes standards in coordination with ASTM International for the composition or chemical or physical properties of an aircraft fuel or fuel additive to control or eliminate aircraft emissions that the EPA "decides under section 231 of the Clean Air Act endanger the public health or welfare[.]" 49 U.S.C. 44714.

Aircraft and engine manufacturers, airlines, airports and the FAA established the Commercial Aviation Alternative Fuels Initiative (CAAFI) in 2006 to explore the potential use of alternative fuels for aircraft for energy security and possible environmental improvements. Any alternative fuel developed through CAAFI would need to meet comprehensive performance and safety specifications. These specifications would require the fuel and related engine types to go through FAA flight testing and airworthiness certification to determine whether the fuels are safe for aircraft operations

3. Is there any reason to think that the International Civil Aviation Organization, which is part of the UN, is not capable of working through this issue?

We are optimistic and hopeful that ICAO will be able to work through this issue. We support the International Civil Aviation Organization (ICAO) as an appropriate forum to address issues related to international aviation emissions. FAA, EPA and other agencies represent the U.S. in ICAO in developing emission standards and related requirements for aircraft. Historically, ICAO has developed

emission standards related to air pollutants that embrace operationally safe current technology, and we have adopted such standards under the Clean Air Act.

At the 36th ICAO Assembly in October 2007, the assembly agreed to establish a high-level group through ICAO to develop a comprehensive plan on international aviation and climate change. The plan will develop a framework to achieve emissions reductions based on voluntary measures, technological advances, operational measures, positive economic incentives and market-based measures. Historically, ICAO has supported market pressures to address fuel efficiency and therefore CO₂ emissions rather than specific CO₂ emission standards or other regulatory measures as has been historical practice for other air pollutants. A report with recommendations is due to be completed before the next Assembly Session in 2010.

4. What do you think is a realistic time frame for developing biofuels to replace current jet fuel on a commercial basis?

As discussed earlier, industry and FAA set up CAAFI in 2006 to explore the potential use of alternative fuels for aircraft. CAAFI's goals are to have available for certification in 2008 a 50 percent Fischer-Tropsch synthetic kerosene fuel, 2010 for 100 percent synthetic fuel, and as early as 2013 for other biofuels.

Fischer-Tropsch is a process to produce synthetic fuels. Synthetic liquid fuels can be produced from natural gas, coal, or biomass. Therefore, Fischer-Tropsch fuels cannot be defined as biofuels. In February 2008, Boeing, General Electric, and Virgin Atlantic Airlines tested a Boeing 747 that was partly powered by a biofuel made from babassu nuts and coconut oil, a first for a commercial aircraft. In regard to replacing current jet fuel used in commercial aircraft with biofuels, the 2007 ICAO Environmental Report provides a perspective on this issue. For the present and short-term, synthetic jet fuel processed using the Fischer-Tropsch process is anticipated. For the medium-term, there is the possibility for the use of bio-fuels, but they would need to be certified through the FAA qualification process mentioned in our response to question 2.

5. Would you agree that strategies to reduce CO₂ emissions can make it more difficult to reduce nitrogen oxide emissions?

There is no single relationship between NO_x and CO₂ that holds for all engine types. As the temperatures and pressures in the combustors are increased to obtain better efficiency, emissions of NO_x increase, unless there is also a change in combustor technology. Recently, engine technologies have been developed to improve both CO₂ and NO_x; however, continuing to achieve simultaneous progress in both emissions could prove to be challenging and require substantial R&D investment.

6. Does the EPA have any authority over airline safety? How about air traffic control efficiency?

EPA is directed by section 231(a)(2)(B)(ii) of the Clean Air Act to not change aircraft emission standards if such change would adversely affect safety. The Department of Transportation (DOT) and FAA have the authority to regulate and oversee civil aviation in the U.S. under the Federal Aviation Act of 1958. This includes developing and operating a system of air traffic control and navigation for both civil and military aircraft.

7. What is EPA's responsibility with regard to noise pollution?

The Noise Control Act of 1972 (Pub. Law 92-574) directed the Administrator of EPA (Section 7(a)) to conduct studies that addressed a range of FAA operations, noise impacts, assessment methods, and information for airport operators. The Federal Aviation Act of 1958, and all subsequent revisions of the Act to present, directs the Administrator of the FAA to consult and coordinate with the Administrator of EPA on all studies and regulatory activities regarding public health and welfare from aircraft noise and sonic boom. Section 7 of the Noise Control Act was dropped some years ago in light of the requirements within the subsequent Federal Aviation Acts that contain the above directives. EPA was instructed to make regulatory recommendations to the FAA with the attendant requirement that the FAA publish them in the Federal Register. Thus, it was EPA that wrote the first supersonic transport flight noise standard. Section 6 of the Noise Control Act gives EPA regulatory authority to control the noise emissions of all construction equipment used in and around airports, transportation equipment, any motor or engine that is an integral part of such equipment, and all electrical and electronic equipment. The Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978, remains in effect today. Finally, Clean Air Act section 231(a)(2)(B)(ii) provides that EPA shall not change aircraft engine emission standards if such change would significantly increase noise.

Additional Questions Asked at the Hearing

From Rep. Inslee:

Did EPA have any role in the Air Force's procurement decision to select Air Bus for their new tanker plane? (The Air Bus plane reportedly has higher carbon emissions than the Boeing plane.)

EPA was not involved in the Air Force's decision to choose the Airbus/Northrop Grumman consortium for its new tanker aircraft.

From Rep. Hall:

With respect to Fischer-Tropsch, which you mentioned in your testimony, are you familiar with any studies where CO₂ is pulled out of the air, processed as fuel and passed back through combustion?

We are not aware of any process that makes it feasible to pull CO₂ out of the air, process it as fuel, and pass it back through combustion. To conduct such a process would be highly inefficient. It takes great energy to disassociate C and O₂. Natural sinks of CO₂ are the most efficient way to use or remove CO₂. The primary natural sinks are oceans, rain water and plants and other organisms that utilize photosynthesis to remove it from the atmosphere

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

January 31, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

We have been investigating the practice of hydraulic fracturing and its potential impact on water quality in the United States. Because EPA is also examining this issue, we are writing to share our findings regarding the use of diesel fuel in hydraulic fracturing fluids.

In 2003, EPA signed a memorandum of agreement with the three largest providers of hydraulic fracturing to eliminate the use of diesel fuel in coalbed methane formations in underground sources of drinking water. Two years later, Congress exempted hydraulic fracturing from the Safe Drinking Water Act except when the fracturing fluids contain diesel. As a result, many assumed that the industry stopped using diesel fuel altogether in hydraulic fracturing.

Our investigation has found that this is not the case. Between 2005 and 2009, oil and gas service companies injected 32.2 million gallons of diesel fuel or hydraulic fracturing fluids containing diesel fuel in wells in 19 states. Halliburton injected more than 7 million gallons of diesel fuel or fluids containing diesel; BJ Services injected even more, 11.5 million gallons.

According to EPA, any company that performs hydraulic fracturing using diesel fuel must receive a permit under the Safe Drinking Water Act. We learned that no oil and gas service companies have sought—and no state and federal regulators have issued—permits for diesel fuel use in hydraulic fracturing. This appears to be a violation of the Safe Drinking Water Act. It also means that the companies injecting diesel fuel have not performed the environmental reviews required by the law.

A key question is whether the unauthorized injection of hydraulic fracturing fluids containing diesel fuel is adversely affecting drinking water supplies. None of the oil and gas service companies could provide data on whether they performed hydraulic fracturing in or near underground sources of drinking water, telling us that the well operators, not the service companies, track that information. We also asked about diesel fuel use in coalbed methane formations, which tend to be shallower and closer to drinking water sources. The three largest companies—Halliburton, BJ Services, and Schlumberger—told us they have stopped using diesel fuel in coalbed methane formations located in underground sources of drinking water. Three smaller companies reported using a limited volume of products containing diesel in coalbed methane wells but did not provide information on the proximity of these wells to drinking water sources.

Background

The oil and gas industry uses hydraulic fracturing to force fluids and propping agents into oil and gas production wells at extremely high pressure, cracking the oil or gas seams and allowing trapped natural gas and oil to escape. In many instances, the fluids used in this process are water-based. There are some formations, however, that are not fractured effectively by water-based fluids because clay or other substances in the rock absorb water. In these formations, diesel fuel or other hydrocarbons may replace water as the primary carrier fluid to transport sand and other proppants into the fractures created by the hydraulic fracturing process.

EPA has raised concerns about the potential public health risks posed by diesel fuel used in hydraulic fracturing fluids. In a 2004 report, EPA stated that the “use of diesel fuel in fracturing fluids poses the greatest threat” to underground sources of drinking water.¹ Diesel fuel contains toxic constituents, including benzene, toluene, ethylbenzene, and xylenes (collectively known as “BTEX” compounds). The Department of Health and Human Services, the International Agency for Research on Cancer, and EPA have determined that benzene is a human carcinogen.² Chronic exposure to toluene, ethylbenzene, or xylenes also can damage the central nervous system, liver, and kidneys.³

¹ U.S. Environmental Protection Agency, *Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs* (June 2004) (EPA 816-R-04-003) at 4-11.

² U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, *Public Health Statement for Benzene* (Aug. 2007).

³ U.S. Environmental Protection Agency, *Basic Information about Toluene in Drinking Water, Basic Information about Ethylbenzene in Drinking Water, and Basic Information about*

In December 2003, EPA entered into a voluntary memorandum of agreement (MOA) with the three largest hydraulic fracturing companies, Halliburton, BJ Services, and Schlumberger, to "eliminate diesel fuel in hydraulic fracturing fluids injected into coalbed methane production wells in underground sources of drinking water."⁴ The MOA focused on coalbed methane wells because they tend to be shallower and closer to underground sources of drinking water than other oil and gas production wells. The MOA did not address hydraulic fracturing in other formations.

In 2005, Congress passed the Energy Policy Act, which contained a provision addressing the application of Safe Drinking Water Act (SDWA) to hydraulic fracturing. Congress modified the definition of "underground injection" to exclude "the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities."⁵

The effect of this law is to exempt hydraulic fracturing from the underground injection control (UIC) permit requirements unless the fluid being injected is diesel fuel. As EPA states on its website:

While the SDWA specifically excludes hydraulic fracturing from UIC regulation under SDWA § 1421 (d)(1), the use of diesel fuel during hydraulic fracturing is still regulated by the UIC program. Any service company that performs hydraulic fracturing using diesel fuel must receive prior authorization from the UIC program.⁶

Perhaps as a result of the actions of EPA and Congress, some have assumed that the oil and gas industry has stopped using diesel in hydraulic fracturing. EPA staff told the Committee that the agency assumed that the MOA had eliminated most diesel use.⁷ In a 2004 letter to

Xylenes in Drinking Water (online at <http://water.epa.gov/drink/contaminants/basicinformation/index.cfm>) (accessed Jan. 21, 2011).

⁴ Memorandum of Agreement between the U.S. Environmental Protection Agency and BJ Services Company, Halliburton Energy Services, Inc., and Schlumberger Technology Corporation (Dec. 12, 2003).

⁵ 42 U.S.C. § 300h(d).

⁶ U.S. Environmental Protection Agency, Regulation of Hydraulic Fracturing by the Office of Water (online at http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/wells_hydroreg.cfm) (accessed Jan. 21, 2011).

⁷ Phone briefing by Ann Codrington, U.S. Environmental Protection Agency, to Committee Staff (Oct. 22, 2010).

Senator Jim Jeffords, Benjamin Grumbles, the Acting Assistant Administrator for EPA at the time, wrote that the MOA "accomplished the intended goal of removing diesel from hydraulic fracturing fluids in a matter of months."⁸ At a hearing on hydraulic fracturing in the Committee on Oversight and Government Reform in 2007, Rep. Darrell Issa asserted, "this practice does not include the use of diesel fuel."⁹ In January 2010, Energy In Depth, a group representing most of America's oil and gas producers, wrote that "diesel fuel is simply not used in fracturing operations."¹⁰

Our Investigation

On February 18, 2010, the Committee commenced an investigation into the practice of hydraulic fracturing and its potential impact on water quality across the United States. This investigation was intended to build on work begun by Ranking Member Henry A. Waxman in 2007 as Chairman of the Committee on Oversight and Government Reform.

The Committee initially sent letters to eight oil and gas service companies engaged in hydraulic fracturing in the United States regarding the type and volume of chemicals they used in hydraulic fracturing fluids between 2005 and 2009. In May, the Committee sent letters to six additional oil and gas service companies to assess a broader range of industry practices.¹¹

The 14 oil and gas service companies voluntarily provided the Committee with data on the volume of diesel fuel and other hydraulic fracturing fluids they used during the five year period.¹² For each hydraulic fracturing fluid, the companies provided the Committee a Material

⁸ Letter from Benjamin Grumbles, Acting Assistant Administrator, U.S. Environmental Protection Agency, to Senator Jim Jeffords (Dec. 7, 2004) as cited in the Congressional Record, S7278 (June 23, 2005).

⁹ House Committee on Oversight and Government Reform, Opening Statement of Rep. Darrell Issa, *Oil and Gas Exemptions in Federal Environmental Protections*, 110th Cong. (Oct. 31, 2007).

¹⁰ Energy in Depth, *When Gummy Bears Attack* (Jan. 20, 2010) (online at <http://www.energyindepth.org/2010/01/when-gummy-bears-attack/>) (accessed Jan. 21, 2011).

¹¹ The Committee sent letters to Basic Energy Services, BJ Services, Calfrac Well Services, Complete Production Services, Frac Tech Services, Halliburton, Key Energy Services, RPC, Sanjel Corporation, Schlumberger, Superior Well Services, Trican Well Service, Universal Well Services, and Weatherford.

¹² BJ Services, Halliburton, and Schlumberger already had provided Chairman Henry A. Waxman and the Oversight Committee with data for 2005 through 2007. For BJ Services, the

Safety Data Sheet (MSDS) detailing the fluid's chemical components. If the MSDS for a particular product listed a chemical component as proprietary, the company that used that product was asked to provide the proprietary information.

Using this information, our staff calculated how much diesel fuel and fracturing fluids containing diesel fuel these 14 companies used between 2005 and 2009.¹³

Use of Diesel Fuel in Hydraulic Fracturing

Between 2005 and 2009, 12 of the 14 companies used 32.2 million gallons of diesel fuel or fluids containing diesel fuel.¹⁴ BJ Services used the most diesel fuel and fluids containing diesel, more than 11.5 million gallons, followed by Halliburton, which used 7.2 million gallons. Four other companies, RPC (4.3 million gallons), Sanjel (3.6 million gallons), Weatherford (2.1 million gallons), and Key Energy Services (1.6 million gallons), used more than one million gallons of diesel fuel and fluids containing diesel.

These 12 companies injected these diesel-containing fluids in 19 states. Diesel-containing fluids were used most frequently in Texas, which accounted for half of the total volume injected, 16 million gallons. The companies injected at least one million gallons of diesel-containing fluids in Oklahoma (3.3 million gallons), North Dakota (3.1 million gallons), Louisiana (2.9 million gallons), Wyoming (2.9 million gallons), and Colorado (1.3 million gallons).

Tables 1 and 2, which are attached to this letter, list the companies that reported using diesel-containing fluids and the states in which they injected them.

Diesel fuel was a significant component of the diesel-containing fluids these companies injected. The companies used 10.2 million gallons of straight diesel fuel and 21.8 million gallons of products containing at least 30% diesel fuel.

2005-2007 data is limited to natural gas wells. For Schlumberger, the 2005-2007 data is limited to coalbed methane wells.

¹³ The Committee reviewed all MSDSs produced to the Committee and included the following in the category of "diesel": diesel fuel, products with components with the Chemical Abstracts Service (CAS) registry number of 68476-34-6, 68476-30-2, or 68334-30-5, and products with "diesel" named as a component but lacking a CAS number.

¹⁴ Calfrac Well Services and Universal Well Services did not use any fracturing fluids containing diesel during this time period.

Lack of Regulation

Under the Safe Drinking Water Act, oil and gas service companies that inject diesel fuel or fluids containing diesel fuel as part of the hydraulic fracturing process must obtain a permit under the underground injection control program.¹⁵ The purpose of this permitting requirement is to distinguish between underground injections that threaten drinking water supplies, which are denied permits, and those that do not, which are allowed to go forward. EPA's regulations prohibit any underground injection that "allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation ... or may otherwise adversely affect the health of persons."¹⁶ The person seeking the injection permit has the burden of demonstrating that the injection will not endanger drinking water sources.¹⁷

To assess whether the companies obtained the required permits before using diesel fuel or hydraulic fracturing fluids containing diesel, our staff contacted the state agencies and regional EPA offices responsible for overseeing underground injection wells in the 19 states where the companies reported using products containing diesel fuel.¹⁸ The staff asked these agencies if they had ever issued a permit under the UIC program for diesel fuel or hydraulic fracturing fluids containing diesel or if an oil and gas service company had ever requested such a permit. Each state and regional EPA office contacted stated that no such permit had ever been sought or granted.

In some instances, the officials we contacted expressed doubt that companies still used diesel as a hydraulic fracturing fluid or additive or were unaware of continued diesel fuel use. An engineer from the Colorado Oil and Gas Conservation Commission, for example, said that diesel is "rarely used" and said he knew of only one time diesel fuel was used in hydraulic

¹⁵ U.S. Environmental Protection Agency, Regulation of Hydraulic Fracturing by the Office of Water (online at http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/wells_hydroreg.cfm) (accessed Jan. 21, 2011).

¹⁶ 40 CFR § 144.12(a).

¹⁷ 42 USC 300h (b)(1).

¹⁸ Committee staff spoke with state agencies and regional EPA offices responsible for Class II injection wells in Alabama, Alaska, Arkansas, Colorado, Florida, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, New Mexico, Oklahoma, Pennsylvania, Texas, Utah, and Wyoming. Despite repeated attempts, Committee staff was unable to speak with anyone at the North Dakota Industrial Commission or California Department of Conservation.

fracturing in Colorado.¹⁹ The Railroad Commission of Texas, which regulates oil and gas activity in the state, responded that it only recently learned that handful of companies may have used diesel fuel without prior approval. The Commission has contacted these operators for additional information.²⁰

Impact on Underground Sources of Drinking Water

A key unanswered question is whether the unregulated injection of diesel fuel or fluids containing diesel is adversely affecting drinking water supplies. In an attempt to answer this question, we asked each of the oil and gas service companies to provide data on whether it has performed hydraulic fracturing in or near underground sources of drinking water. None of the hydraulic fracturing service companies could provide this data because they do not track the proximity of the wells they fracture to underground sources of drinking water. They reported that the operators of the oil and gas wells would be more likely to maintain the requested information.

BJ Services, for example, responded that the company "does not track or maintain such data because it is the responsibility of the well operator to drill in compliance with the applicable statutes and regulations concerning subsurface aquifers."²¹ Calfrac Well Services stated that "the presence of 'underground sources of drinking water' is a matter which is addressed by the well operator and governmental authorities in the well permitting and drilling process."²² Frac Tech similarly stated that "the location of drinking water aquifers and the isolation of the well from any drinking water aquifers is handled by others in the well process."²³ Key Energy Services asserted that "because Key is not the owner nor the operator of the wells on which it provides

¹⁹ E-mail from State of Colorado Oil and Gas Conservation Commission to Committee staff (Sept. 23, 2010).

²⁰ E-mail from Railroad Commission of Texas to Committee staff (Nov. 2, 2010).

²¹ Letter from Mark R. Paoletta, Counsel to BJ Services, to Henry A. Waxman, Chairman, Committee on Energy and Commerce, and Edward J. Markey, Chairman, Subcommittee on Energy and Environment (Mar. 5, 2010).

²² Letter from John Grisdale, President, Calfrac Well Services, to Henry A. Waxman, Chairman, Committee on Energy and Commerce, and Edward J. Markey, Chairman, Subcommittee on Energy and Environment (Mar. 19, 2010).

²³ E-mail from Ronald J. Tenpas, Counsel to Frac Tech, to Committee staff (Mar. 24, 2010).

services, Key does not possess information about the location of drinking water, if any, around the wells."²⁴

We then asked the oil and gas companies that operate the wells the same question. Several of these companies responded that they operated wells only in formations where natural gas deposits lie deep below the water table.²⁵ Other companies, however, reported operating wells in shallower formations that meet the SDWA definition of drinking water.²⁶

Although the oil and gas service companies did not keep records of whether they operated in or near underground sources of drinking water, they were able to report on whether their wells were drilled in coalbed methane formations. Diesel use in coalbed methane formations is of particular concern, since these formations tend to be shallower and closer to drinking water sources than conventional oil and gas production wells.²⁷ For this reason, we asked each company that reported using products containing diesel fuel whether they used these products in coalbed methane formations.

The three largest companies—Halliburton, BJ Services, and Schlumberger—told the Committee that they stopped using diesel fuel in coalbed methane formations located in underground sources of drinking water. Three smaller companies reported using a limited

²⁴ Letter from Peter S. Spivack, Counsel to Key Energy Services, to Henry A. Waxman, Chairman, Committee on Energy and Commerce, and Edward J. Markey, Chairman, Subcommittee on Energy and Environment (May 28, 2010).

²⁵ See, e.g., Letter from Jason B. Hutt, Counsel to Chesapeake, to Henry A. Waxman, Chairman, Committee on Energy and Commerce, and Edward J. Markey, Chairman, Subcommittee on Energy and Environment (Aug. 27, 2010); Letter from Jeff Wojahn, President, Encana, to Henry A. Waxman, Chairman, Committee on Energy and Commerce, and Edward J. Markey, Chairman, Subcommittee on Energy and Environment (Aug. 19, 2010).

²⁶ See, e.g., Letter, Appendix, from Shirley C. Woodward, Counsel to BP, to Henry A. Waxman, Chairman, Committee on Energy and Commerce, and Edward J. Markey, Chairman, Subcommittee on Energy and Environment, (Aug. 12, 2010) (stating that BP operates wells in underground sources of drinking water); Letter from William F. Whitsitt, Executive Vice President, Public Affairs, Devon, to Henry A. Waxman, Chairman, Committee on Energy and Commerce, and Edward J. Markey, Chairman, Subcommittee on Energy and Environment (Aug. 5, 2010) (stating that Devon operates wells at depths of 1,000 to 2,000 feet and that "fresh water zones are present at this depth of field").

²⁷ U.S. Environmental Protection Agency, *Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs* (June 2004) (EPA 816-R-04-003) at ES-7.

volume of products containing diesel in coalbed methane wells but did not provide information on the proximity of these wells to drinking water sources.

Halliburton reported that it used diesel-containing products in a small number of coalbed methane wells between 2005 and 2007, but the company explained that the fracturing occurred either below any drinking water source or in aquifers that do not meet the definition of an underground source of drinking water. The company says it has not used products containing diesel fuels in coalbed methane wells since 2007.²⁸ Schlumberger reported that the company has policies in place to ensure that company employees do not use fluids containing diesel in coalbed methane formations.²⁹

In 2008, BJ Services informed the Committee on Oversight and Government Reform that it had used 1,700 gallons of diesel-based polymer slurries in Arkansas and Oklahoma between 2005 and 2007 "in violation of the MOA."³⁰ BJ Services now maintains that these injections did not violate the MOA, stating that the "inadvertent use" of diesel-based polymer slurries in Arkansas and Oklahoma occurred "hundreds or thousands of feet" beneath any freshwater-bearing zone.³¹ BJ Services confirmed that it "has not used diesel fuel in coalbed methane formations in USDWs since the 2003 MOA was put in place."³²

Three other companies reported using some products containing diesel fuel in coalbed methane formations in small amounts: RPC (28,600 gallons), Sanjel (4,600 gallons), and Weatherford (2,300 gallons). We did not receive any information from these companies on the proximity of the coalbed methane wells to underground sources of drinking water.

²⁸ Letter from Robert J. Moran, Halliburton, to Henry A. Waxman, Chairman, Committee on Energy and Commerce, and Edward J. Markey, Chairman, Subcommittee on Energy and Environment (Aug. 26, 2010); e-mail from Thomas C. Jackson to Committee staff (Sept. 10, 2010).

²⁹ Letter from Steven R. Ross and John F. Sopko, Counsel to Schlumberger, to Henry A. Waxman, Chairman, Committee on Energy and Commerce, and Edward J. Markey, Chairman, Subcommittee on Energy and Environment (Sept. 15, 2010).

³⁰ Letter from L. Andrew Zausner, Counsel to BJ Services, to Henry A. Waxman, Chairman, Committee on Oversight and Government Reform (Jan. 24, 2008).

³¹ Letter from Jason B. Hutt, Counsel to BJ Services, to Committee staff (Oct. 15, 2010).

³² *Id.*

The Honorable Lisa Jackson
January 31, 2011
Page 10

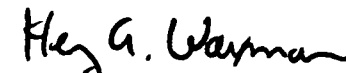
Conclusion

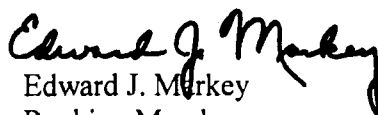
The information we have reviewed shows that the oil and gas industry has injected millions of gallons of diesel fuel and hydraulic fracturing fluids containing diesel fuel since 2005. These activities appear to be a violation of the Safe Drinking Water Act because the companies did not obtain permits authorizing the injection of diesel fuel.


We are unable to draw definitive conclusions about the potential impact of these injections on public health or the environment. The oil and gas service companies we contacted were able to provide only limited information about the proximity of their hydraulic fracturing operations to underground sources of drinking water. Moreover, because the companies did not apply for the permits required under the Safe Drinking Water Act, the regulatory agencies that would have reviewed the permit applications knew little about the diesel injections or what their potential impact might be.

We urge you to examine the use of hydraulic fracturing fluids containing diesel fuel as part of your investigation into the industry's practices. This appears to be an area of significant noncompliance with the requirements of the Safe Drinking Water Act.

Sincerely,


Henry A. Waxman
Ranking Member
Committee on Energy and
Commerce


Edward J. Markey
Ranking Member
Committee on Natural
Resources


Diana DeGette
Ranking Member
Subcommittee on Oversight
and Investigations

Attachment

cc: The Honorable Fred Upton
Chairman

The Honorable Joe Barton
Chairman Emeritus

The Honorable Cliff Stearns
Chairman
Subcommittee on Oversight
and Investigations

Attachment

Table 1. Injection of Hydraulic Fracturing Fluids Containing Diesel Fuel: By Company (2005-2009)

Company	Volume (gallons)
Basic Energy Services	204,013
BJ Services	11,555,538
Complete	4,625
Frac Tech	159,371
Halliburton	7,207,216
Key Energy Services	1,641,213
RPC	4,314,110
Sanjel	3,641,270
Schlumberger	443,689
Superior	833,431
Trican	92,537
Weatherford	2,105,062
Total	32,202,075

Table 2. Injection of Hydraulic Fracturing Fluids Containing Diesel Fuel: By State (2005-2009)

State	Volume (gallons)	State	Volume (gallons)
AK	39,375	MS	221,044
AL	2,464	MT	662,946
AR	414,492	ND	3,138,950
CA	26,466	NM	605,480
CO	1,331,543	OK	3,337,325
FL	377	PA	589
KS	50,304	TX	16,031,927
KY	212	UT	404,572
LA	2,971,255	WY	2,954,747
MI	8,007	Total	32,202,075

AL-10-000-2708

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

February 17, 2010

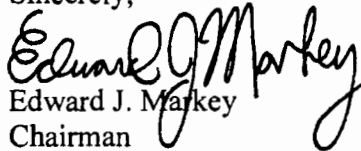
Jim Jones
Deputy Assistant Administrator
Office of Prevention, Pesticides and Toxic Substances (OPPTS)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Mr. Jones:

I am writing to request your testimony at an oversight hearing before the Subcommittee on Energy and Environment entitled "Endocrine Disrupting Chemicals in Drinking Water: Risks to Human Health and the Environment" on Thursday, February 25, 2010 at 9:30 a.m. in Room 2322 of the Rayburn House Office Building.

I ask that your testimony focus on the Endocrine Disruptor Screening Program (EDSP), efforts to identify and prioritize potential endocrine disrupting chemicals that may be present in drinking water, and mechanisms available to publicize and respond to information collected in the screening process. The attachment to this letter provides information about testifying before the Committee. If you have any questions, please contact Jacqueline Cohen (202-226-2424) or Dr. Michal Freedhoff (202-225-2836) of the Committee staff, or Dr. Avenel Joseph of Rep. Markey's staff (202-225-2836).

Sincerely,


Edward J. Markey
Chairman

Subcommittee on Energy and Environment

Enclosure

cc: The Honorable Henry A. Waxman
Chairman

The Honorable Joe Barton
Ranking Member

The Honorable Fred Upton
Ranking Member
Subcommittee on Energy and Environment

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOHN D. DINGELL, MICHIGAN
CHARMAN EMBERTUS
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
FRANK PALLONE, JR., NEW JERSEY
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
ANNA G. ESHOO, CALIFORNIA
BART STUPAK, MICHIGAN
D. OT L. ENGEL, NEW YORK
GENE GREEN, TEXAS
DIANA DEGETTE, COLORADO
VICE CHAIRMAN
LOIS CAPPS, CALIFORNIA
MIKE JOHNS, PENNSYLVANIA
JANE HARMAN, CALIFORNIA
JAN SCHAKOWSKY, ILLINOIS
CHARLES A. GONZALEZ, TEXAS
JAY INSLEE, WASHINGTON
TAMMY BALDWIN, WISCONSIN
MIKE HUSS, ARKANSAS
ANTHONY D. WEINER, NEW YORK
JIM MATHESON, UTAH
G. K. BUTTERFIELD, NORTH CAROLINA
CHARLIE MELANCON, LOUISIANA
JOHN BARRROW, GEORGIA
BARDON P. HILL, INDIANA
DORIS D. MATSUI, CALIFORNIA
DONNA CHRISTENSEN, VIRGINIA ISLANDS
KATHY CASTOR, FLORIDA
JOHN SARBANES, MARYLAND
CHRISTOPHER MURPHY, CONNECTICUT
JUDY T. SPENCE, OHIO
JERRY MCNERNEY, CALIFORNIA
BETTY SUTTON, OHIO
BRUCE BRALEY, IOWA
PETER WELCH, VERMONT

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

MAJORITY (202) 225-2927
FAVORABLE (202) 225-2525
MINORITY (202) 225-3641

energycommerce.house.gov

JOE BARTON, TEXAS
RANKING MEMBER

RALPH M. HALL, TEXAS
FRED UPTON, MICHIGAN
CLIFF STEARNS, FLORIDA
NATHAN DEAL, GEORGIA
ED WHITFIELD, KENTUCKY
JOHN SHIMKUS, ILLINOIS
JOHN B. SHADEGG, ARIZONA
ROY BLUNT, MISSOURI
STEVE BUYER, INDIANA
GEORGE HADADNICH, CALIFORNIA
JOSEPH R. PILLIS, PENNSYLVANIA
MARY BONO MACK, CALIFORNIA
GREG WALDEN, OREGON
LEE TERRY, NEBRASKA
MIKE HUGERS, MICHIGAN
SUE WILKINS MYRICK, NORTH CAROLINA
JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA
MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE
PHIL GINGREY, GEORGIA
STEVE SCALISE, LOUISIANA

Witness Information Sheet

The following is a summary of some of the pertinent rules and procedures applicable to witnesses testifying before the Committee on Energy and Commerce:

- Witnesses should provide 150 copies of their written testimony (75 copies for subcommittee hearings) to Earley Green, Chief Clerk, in Room 2125 of the Rayburn House Office Building no later than 10:00 a.m. two business days prior to the hearing. Witnesses should also provide statements by this date in electronic format, either as a CD or via email in .pdf format to earley.green@mail.house.gov.
- At the hearing, each witness will be asked to summarize his or her written testimony in five minutes or less in order to maximize the time available for discussion and questions.
- House Rule XI clause 2(g)(4) requires that witnesses appearing in a nongovernmental capacity submit to the Committee in advance of the hearing "a curriculum vitae and a disclosure of the amount and source (by agency and program) of *each* Federal grant (or subgrant thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness." The attached form and instructions are intended to assist witnesses in complying with this requirement.
- Witnesses with disabilities should contact Committee staff to arrange any necessary accommodations.
- The jurisdiction of the Committee on Energy and Commerce is set forth in House Rule X clauses 1(f), 2, 3(e), and 4(e).
- The Committee rules governing this hearing are online at <http://energycommerce.house.gov/>.

For inquiries regarding these rules and procedures, please contact the Committee on Energy and Commerce at (202) 225-2927.

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOHN D. DINGELL, MICHIGAN
CHAIRMAN EMERITUS
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
FRANK PALLONE, JR., NEW JERSEY
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
ANNA G. ESHOO, CALIFORNIA
BART STUPAK, MICHIGAN
ELIOT L. ENGEL, NEW YORK
GENE GREEN, TEXAS
DIANA DEGETTE, COLORADO
VICE CHAIRMAN
LOIS CAPPS, CALIFORNIA
MIKE DOYLE, PENNSYLVANIA
JANE HARMAN, CALIFORNIA
JAN SCHAKOWSKY, ILLINOIS
CHARLES G. WAXMAN, TEXAS
JAY INSLEE, WASHINGTON
TAMMY BALDWIN, WISCONSIN
MIKE ROSS, ARKANSAS
ANTHONY D. WEINER, NEW YORK
JIM MATHESON, UTAH
G.K. BUTTERFIELD, NORTH CAROLINA
CHARLIE MELANCON, LOUISIANA
JOHN BARROW, GEORGIA
BARON P. HILL, INDIANA
DORIS O. MATSUI, CALIFORNIA
DONNA CHRISTENSEN, VIRGIN ISLANDS
KATHY CASTOR, FLORIDA
JOHN SARBANES, MARYLAND
CHRISTOPHER MURPHY, CONNECTICUT
ZACHARY T. SPACE, OHIO
JERRY MCNERNEY, CALIFORNIA
BETTY SUTTON, OHIO
BRUCE BRALEY, IOWA
PETER WELCH, VERMONT

JOE BARTON, TEXAS
RANKING MEMBER

RALPH M. HALL, TEXAS
FRED UPTON, MICHIGAN
CLIFF STEARNS, FLORIDA
NATHAN DEAL, GEORGIA
ED WHITFIELD, KENTUCKY
JOHN SHIMKUS, ILLINOIS
JOHN B. SHADEGG, ARIZONA
ROY BLUNT, MISSOURI
STEVE BUYER, INDIANA
GEORGE RADANOVICH, CALIFORNIA
JOSEPH R. PITTS, PENNSYLVANIA
MARY BONO MACK, CALIFORNIA
GREG WALDEN, OREGON
LEE TERRY, NEBRASKA
MIKE ROGERS, MICHIGAN
SUE WILKINS MYRICK, NORTH CAROLINA
JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA
MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE
PHIL GINGREY, GEORGIA
STEVE SCALISE, LOUISIANA

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

MAJORITY (202) 225-2927
FACSIMILE (202) 225-2525
MINORITY (202) 225-3641

energycommerce.house.gov

February 27, 2009

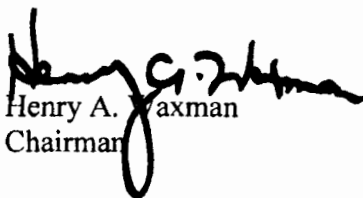
The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington DC, 20460


Dear Administrator Jackson:

One of the top priorities of the Committee on Energy and Commerce is to pass comprehensive climate change legislation. To facilitate this effort, we are requesting technical assistance from the Environmental Protection Agency (EPA). In particular, we request that EPA estimate the economic impacts of our draft legislation as it is developed. EPA's analysis of the draft legislation would prove useful to us and other members of the House as we craft measures to combat global climate change.

We ask that EPA begin this process by meeting with our staff to discuss the parameters, methods, and duration of the analysis. Please call Alexandra Teitz, Lorie Schmidt or Joel Beauvais at (202) 225-4407.

Sincerely,


Henry A. Waxman
Chairman


Edward J. Markey
Chairman
Subcommittee on Energy and
Environment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 03 2009

OFFICE OF
AIR AND RADIATION

The Honorable Edward J. Markey
Chairman, Subcommittee on Energy and Environment
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515-6115

Dear Mr. Chairman:

Thank you for your letter dated February 27, 2009, to Administrator Jackson, in which you requested that the U.S. Environmental Protection Agency (EPA) estimate the economic impacts of the Committee on Energy and Commerce draft climate change legislation. The Administrator asked that I respond to your letter.

We would be pleased to conduct this analysis. As you know, we recently held a meeting with your staff to discuss the details, timing, and assumptions needed to conduct the analysis.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Diann Frantz, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-3668.

Sincerely,

Elizabeth Craig
Acting Assistant Administrator

AL-08-000-9093

**THE WHITE HOUSE OFFICE
REFERRAL**

July 02, 2008

TO: ENVIRONMENTAL PROTECTION AGENCY

ACTION REQUESTED: APPROPRIATE ACTION

DESCRIPTION OF INCOMING:

ID: 757880

MEDIA: FAX

**DOCUMENT
DATE:** JUNE 24, 2008

TO: PRESIDENT BUSH

FROM: ED MARKEY
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

SUBJECT: WRITES CONCERNING GREENHOUSE GAS EMISSIONS AND THE BUSH
ADMINISTRATION ADVANCED NOTICE OF PROPOSED RULEMAKING
(ANPR)

COMMENTS:

PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9
WORKING DAYS OF RECEIPT, UNLESS OTHERWISE STATED, PLEASE TELEPHONE THE
UNDERSIGNED AT 456-2590.

RETURN **ORIGINAL** CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT)
TO: DOCUMENT TRACKING UNIT, ROOM 84, OFFICE OF RECORDS MANAGEMENT - THE WHITE
HOUSE, 20500

THE WHITE HOUSE DOCUMENT MANAGEMENT AND TRACKING WORKSHEET



DATE RECEIVED: 6/30/2008

CASE ID: 757880

NAME OF CORRESPONDENT: THE HONORABLE ED MARKEY

SUBJECT: WRITES CONCERNING GREENHOUSE GAS EMISSIONS AND THE BUSH
ADMINISTRATION ADVANCED NOTICE OF PROPOSED RULEMAKING (ANPR)

ROUTE TO: AGENCY/OFFICE	(STAFF NAME)	ACTION		DISPOSITION	
LEGISLATIVE AFFAIRS	DAN MEYER	ORG	7/2/2008		
ACTION COMMENTS:					
ENVIRONMENTAL PROTECTION AGENCY		A	7/2/2008		
ACTION COMMENTS:					
DEPARTMENT OF ENERGY		I	7/2/2008	C	
ACTION COMMENTS:					
COUNCIL ON ENVIRONMENTAL QUALITY		I	7/2/2008	C	
ACTION COMMENTS:					
ACTION COMMENTS:					

COMMENTS:

MEDIA: FAX

USER CODE:

**SCANNED
BY
ORM**

ACTION CODES:	DISPOSITION		
A - APPROPRIATE ACTION B - RESEARCH AND REPORT BACK D - DRAFT RESPONSE I - INFO COPY/NO ACT NECESSARY R - DIRECT REPLY W/ COPY	TYPE RESPONSE:	DISPOSITION CODES:	COMPLETED DATE:
	TYPE RESPONSE = INITIALS OF SIGNER NRN = NO RESPONSE NEEDED	A - ANSWERED/ ACKNOWLEDGED C - CLOSED X - INTERIM REPLY	COMPLETED = DATE OF ACKNOWLEDGEMENT OR CLOSE- OUT DATE (MM/DD/YY)

**REFER QUESTIONS AND ROUTING UPDATES TO DOCUMENT TRACKING UNIT (ROOM 437, EEOB) EXT-62590 KEEP
THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO**

EDWARD J. MARKEY, MASSACHUSETTS
CHAIRMAN
EARL BLUMENAUER, OREGON
JAY INSLEE, WASHINGTON
JOHN B. LARSON, CONNECTICUT
HILDA L. SOLIS, CALIFORNIA
STEPHANIE HERSETH SANDLIN, SOUTH DAKOTA
EMANUEL CLEAVER, MISSOURI
JOHN J. HALL, NEW YORK
JERRY MCNERNEY, CALIFORNIA



Select Committee on
Energy Independence and Global Warming
U.S. House of Representatives

F. JAMES SENSENBRENNER, JR., WISCONSIN
RANKING MEMBER
JOHN B. SHADEGG, ARIZONA
OREG WALDEN, OREGON
CANDICE S. MILLER, MICHIGAN
JOHN SULLIVAN, OKLAHOMA
MARSHA BLACKBURN, TENNESSEE

757880

June 24, 2008

The Honorable George W. Bush
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

Yesterday marked the twentieth anniversary of Dr. James Hansen's prophetic testimony to Congress that man-made greenhouse gas emissions were warming the Earth to dangerous levels. Dr. Hansen briefed the Select Committee on Energy Independence and Global Warming on his current views on the state of the climate, and he told us that dramatic action was needed to avert environmental damage that would harm our society and our economy as well as the rest of the world. It is against this backdrop that the country (and the world) anxiously awaits the Administration's response, as required by the Supreme Court decision in *Massachusetts v. EPA*, as to whether greenhouse gas emissions from motor vehicles and fuels constitute a reasonably anticipated threat to public health or welfare (a so-called 'endangerment finding'), and if so, what new rules should be put in place to mitigate against such a threat.

On May 14, 2007, you directed EPA, along with other agencies, to prepare a regulatory response to *Massachusetts v. EPA* by the end of 2007 and to complete it by the end of 2008.¹ According to reports, EPA staff spent about six months developing this proposal, and transmitted both a positive finding of endangerment to the White House Office of Management and Budget (OMB) and a draft regulatory proposal to require the equivalent of a 35 miles per gallon (mpg) fuel economy standard from the fleet of cars and light trucks by 2018 to the National Highway Traffic Safety Administration (NHTSA) in early December, 2007.

After a lengthy negotiation with EPA and the White House Counsel's office following the April 3, 2008 issuance by the Select Committee on Energy Independence and Global Warming of a bipartisan subpoena, these documents were recently made available to Select Committee staff.

Based on Committee staff's review of EPA's draft Endangerment Finding and the Draft EPA Vehicle Preamble to NHTSA, entitled, "Control of Greenhouse Gas

¹ See <http://www.whitehouse.gov/news/releases/2007/05/20070514-4.html>

Emissions from Motor Vehicles," dated December 5 and 14 2007, respectively, we now know that last December the EPA – the expert agency charged with administering the Clean Air Act – was prepared to make appropriate recommendations based on the science and the law to combat global warming. Yet for reasons that remain cloaked in secrecy, those recommendations from the administration's science and legal experts were discarded. Instead, as EPA Administrator Stephen Johnson informed me in a March 27, 2008 letter, the EPA was instead preparing, apparently at the direction of the White House, a plan for no-action during your watch: an Advanced Notice of Proposed Rulemaking (ANPR) that would ensure the sun would set on the Bush Administration without any regulatory action taken on global warming. The White House's last-minute U-turn in response to a Supreme Court mandate is deeply troubling. But we will not know how troubling, and how completely the legal and scientific conclusions that EPA reached in December will be discarded, until the ANPR is released.

Here are some key conclusions from the December 5 and December 14, 2007 EPA documents reviewed by the Select Committee that should be included in any legal and scientific-based ANPR:

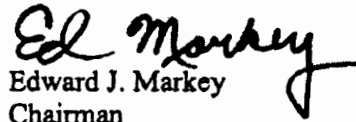
- EPA Administrator Johnson determined – consistent with the views of his scientific and technical advisors – that man-made global warming is unequivocal, the evidence supporting an endangerment finding is both compelling and robust, and the EPA Administrator is required by law to take actions to prevent harm rather than waiting for harm to occur before acting.
- EPA determined that greenhouse gas emissions may reasonably be anticipated to endanger public welfare and that greenhouse gas emissions from motor vehicles and combustion of fuels for onroad and nonroad vehicles and engines do contribute to global warming and should be regulated by EPA under the Clean Air Act.
- EPA believes that dangers to public health or welfare associated with man-made global warming include an increase in the intensity and magnitude of severe heat waves, sea level rise leading to increased storm surge flooding and shoreline erosion, reduced availability of water in water-constrained areas of the country, increased wildfire and insect outbreaks, an increase in heavy precipitation events, an increase in regional ground-level ozone pollution, and changes in the range of vector-borne diseases.
- EPA concluded that the existence of some potential benefits associated with global warming (such as short-term increases in some agricultural yields) does not outweigh the preponderance of the evidence of risks and adverse impacts.
- EPA proposed that regulations to reduce greenhouse gas emissions from motor vehicles be implemented in order to achieve the equivalent of a 35 mpg car and light truck fleet average by 2018 (with the car fleet averaging 38.4 mpg by 2018 and the truck fleet averaging 31 mpg by 2017).
- These proposed standards were estimated to yield annual net societal benefits of almost \$55 billion by 2040. It bears emphasis that these benefits were calculated using Energy Information Administration's (EIA's) 2007 mid-range projected gasoline prices of \$2.03/gallon in 2017 to \$2.22/gallon in 2030. (These

projections were the most recent data available at the time the materials were prepared.) EPA's analysis concluded that the benefits would be much higher using more realistic gasoline prices because higher gasoline price projections would increase the consumer savings associated with driving more efficient vehicles.

- The proposed standards were estimated to add 3-5% to the cost of purchasing a new vehicle, but even using \$2/gallon gasoline, these costs would be recouped in five years or less. The payback period would be much faster using more realistic gasoline prices.
- EPA also assumed that these proposed miles per gallon standards could be increased beyond 35 mpg in the final regulations, because gas prices are the most critical element in setting mpg levels, and projections of gas prices were expected to be increased by the EIA in its 2008 report. Higher gas prices significantly increase the consumer benefits of the more efficient vehicles as well as expand the number of fuel efficient technologies that would be economically practicable to incorporate, leading to more stringent standards.
- EPA found that gasoline savings, which are obviously determined by the projected price of gasoline, is by far the largest consumer benefit associated with the higher fuel efficiency standards. EPA's model did not take into account benefits from reductions in greenhouse gas emissions, so if these are included the benefits would be higher.
- When EPA used the EIA 2007 high gasoline price projections of \$2.75 in 2017 to \$3.20 in 2030 to calculate standards, it found that the car fleet could achieve a standard of 43.3 mpg by 2018 and light trucks could achieve a standard of 30.6 mpg by 2017.
- EPA developed its proposed standards in close consultation with NHTSA, found that they were compatible with the fuel economy standards set by NHTSA, and concluded that those gains could be achieved without undue adverse impacts on the auto industry, its workers or consumers.

The ANPR will be measured against these specific regulatory recommendations and proposals, which are the scientific and legal conclusions of the Administration's expert agency. To do less would be a blatant denial of the overwhelming scientific evidence indicating that greenhouse gas emissions are dangerous, would overrule the scientific and legal recommendations of the EPA, and would further undercut your Administration's credibility on matters related to climate change both here and in the rest of the world.

Sincerely,


Edward J. Markey
Chairman

cc: Rep. F. James Sensenbrenner, Ranking Member



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 26 2008

OFFICE OF
AIR AND RADIATION

The Honorable Edward J. Markey
Chairman
Select Committee on Energy Independence
and Global Warming
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of June 24, 2008, to President Bush which discusses the Advanced Notice of Proposed Rulemaking (ANPR) published in response to the Supreme Court decision in *Massachusetts v. EPA*.

The U.S. Environmental Protection Agency (EPA) issued the ANPR on July 11, 2008 and it was published in the Federal Register on July 30, 2008. The ANPR solicits public input as EPA considers the specific effects of climate change and potential regulation of greenhouse gas emissions (GHG). The ANPR describes key provisions and programs in the Clean Air Act and approaches for regulating greenhouse gases under those provisions as well as issues relevant for Congress to consider for possible future climate legislation. Many of the points raised in your letter are addressed in the ANPR.

On the issue of endangerment, the ANPR states that "expected rates of climate change (driven by past, present and plausible future GHG emissions) pose a number of serious risks to the U.S., even if the exact nature of these risks is difficult to quantify with confidence," and it invites comment on whether or not current levels of GHG concentrations endanger public health or welfare now. The ANPR and the Endangerment Technical Support Document (available in the ANPR docket) includes a thorough discussion of latest scientific research on the following topics: measured increases in global atmospheric concentrations of six major greenhouse gases (carbon dioxide, methane, nitrous oxide, and the industrial fluorinated gases) from pre-industrial levels; the global average net warming effect resulting from the increase in atmospheric GHG concentrations, plus other human activities; observed increases in global average temperatures since the mid-20th century; and the impacts of regional climate change on natural systems, including sea level rise, increases in precipitation, and changes in extreme temperatures.

The ANPR also addresses many of the items raised in your letter regarding the timing, stringency and benefits of regulations to reduce greenhouse gas emissions from motor vehicles. It includes two regulatory scenarios for passenger cars and light trucks, including a 4 percent per year scenario conducted in 2007 and an updated analysis of this scenario.

I appreciate your interest and the committee's review of the many issues addressed in the ANPR. If you have further questions, please contact me or your staff may call Patricia Haman, in EPA's Office of Congressional and Intergovernmental Relations, at 202-564-2806.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Meyers", written over the printed name.

Robert J. Meyers
Principal Deputy Assistant Administrator

HL-12-001-8828



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 09 2012

THE ADMINISTRATOR

The Honorable Ed Markey
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Markey:

I am pleased to support the charter renewal of the Advisory Council on Clean Air Compliance Analysis in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Advisory Council on Clean Air Compliance Analysis is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Committee will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina J. Moody in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

Sincerely

A handwritten signature in black ink, appearing to read "Lisa P. Jackson", written over a horizontal line.

Lisa P. Jackson

Enclosure

AL-12-001-8835



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 09 2012

THE ADMINISTRATOR

The Honorable Ed Markey
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Markey:

I am pleased to support the charter renewal of the National Environmental Education Advisory Council in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The National Environmental Education Advisory Council is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Committee will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina J. Moody in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa P. Jackson".

Lisa P. Jackson

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

NATIONAL ENVIRONMENTAL EDUCATION ADVISORY COUNCIL

1. **Committee's Official Designation (Title):**

National Environmental Education Advisory Council

2. **Authority:**

This charter renews the National Environmental Education Advisory Council (NEEAC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The NEEAC was created by Congress to advise, consult with, and make recommendations to the Administrator of the Environmental Protection Agency (EPA) on matters related to activities, functions and policies of EPA under the National Environmental Education Act (the Act). 20 U.S.C. § 5508(b).

3. **Objectives and Scope of Activities:**

The NEEAC will provide advice, information, and make recommendations on matters related to activities, functions and policies of EPA under the Act.

The major objectives are to provide advice and recommendations on:

- a. The biennial report to Congress assessing environmental education in the United States (§ 9(d)(1) of the Act).
- b. EPA's solicitation, review, and selection processes for the training and grant programs
- c. The merits of individual proposals to operate the § 5 training program and the § 6 grant program, as requested by EPA.
- d. Overall implementation of the Act.

4. **Description of Committees Duties:**

The duties of the NEEAC are to provide advice to EPA.

5. **Official(s) to Whom the Committee Reports:**

The NEEAC will submit advice and recommendations and report to the EPA Administrator through the Office of External Affairs and Environmental Education (OEAAEE).

6. Agency Responsible for Providing the Necessary Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Environmental Education, within the Office of External Affairs and Environmental Education (OEAE), under the Office of the Administrator.

7. Estimated Annual Operating Costs and Work Years:

The estimated annual operating cost of the NEEAC is \$140,000 which includes 0.7 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the DFO. The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

The NEEAC expects to meet approximately one (1) to two (2) times a year, subject to the availability of appropriations. EPA will pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the NEEAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of Section 552(b) of Title 5, United States Code. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the NEEAC.

10. Duration and Termination:

The Act specifically exempts the NEEAC from section 14(a) of the Federal Advisory Committee Act relating to termination 20 U.S.C. § 5508(b)(6). The NEEAC, however, will file a new charter every two years.

11. Member Composition:

The NEEAC will be composed of eleven (11) members appointed by the EPA Administrator, or designee, after consultation with the Secretary of the U.S. Department of Education. Members will serve as Special Government Employees (SGE), however, the conflict of interest provision at 18 U.S.C. § 208(a) does not apply to members' participation in particular matters which affect the financial interests of their employers. 20 U.S.C. § 5508(b)(2). SGE pay rates will be determined by EPA's Administrator, but may not exceed the daily equivalent of the annual rate for a GS-18 Federal employee.

As required by the Act, the membership of the NEEAC will consist of: two members representing primary and secondary education (including one classroom teacher); two members representing colleges and universities; two members representing not-for-profit organizations involved in environmental education; two members representing State departments of education and natural resources; two members representing business and industry; and one member representing senior Americans. In addition, a representative of the Secretary of Education will serve as an ex officio member and a representative of the National Environmental Education and Training Foundation may serve as an advisor to the NEEAC.

12. Subgroups:

EPA, or the NEEAC with EPA's approval, may form NEEAC subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the NEEAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Section 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

November 1, 2012

Agency Approval Date

NOV 09 2012

Date Filed with Congress

AL-07-001-2522

EDWARD J. MARKEY, MASSACHUSETTS
CHAIRMAN
EARL BLUMENAUER, OREGON
JAY INSLEE, WASHINGTON
JOHN B. LARSON, CONNECTICUT
HILDA L. SOLIS, CALIFORNIA
STEPHANIE HERSETH SANDLIN, SOUTH DAKOTA
EMANUEL CLEAVER, MISSOURI
JOHN J. HALL, NEW YORK
JERRY McNERNEY, CALIFORNIA



F. JAMES SENSENBRENNER, JR., WISCONSIN
RANKING MEMBER
JOHN B. SHADEGG, ARIZONA
GREG WALDEN, OREGON
CANDICE S. MILLER, MICHIGAN
JOHN SULLIVAN, OKLAHOMA
MARSHA BLACKBURN, TENNESSEE

**Select Committee on
Energy Independence and Global Warming
U.S. House of Representatives**

July 27, 2007

Mr. Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Mr. Johnson:

As you may be aware, environmentally-conscious businesses and consumers are increasingly seeking to reduce their carbon footprint by purchasing carbon "offsets." The voluntary offset market is already valued at over \$100 million per year globally, and many expect it to grow to half a billion dollars within the next few years. There are now over three dozen offset providers based in the United States, and the majority of the demand for offsets comes from U.S. businesses and consumers. While no one expects voluntary offsets alone to make a major dent in global warming pollution, they have the potential to make an important contribution.

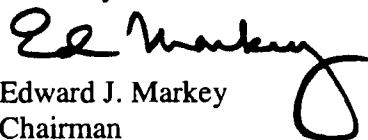
Despite its promise, the voluntary offset market presents serious concerns. It is almost completely unregulated, and the lack of generally accepted standards has raised questions about the credibility of some offset products. Although offset providers and environmental organizations have developed a variety of voluntary standards, the proliferation of such standards may cause further confusion. A wide range of offset providers and other stakeholders have suggested that the federal government could play an important role in bringing order to this market – to ensure that buyers are getting what they pay for, that this funding source for carbon reduction projects is not wasted, and that we maintain the credibility of offsets as a potential tool to limit costs in any future mandatory regime to control global warming pollution.

As the federal agency charged with the protection of the environment, EPA is well positioned to address this set of issues. Indeed, EPA's Climate Leaders program is already engaged in developing protocols for offset projects and has relevant expertise. Consequently, I am writing to request that EPA consider taking a leadership role in promoting the development and implementation of standards for the voluntary offset market – perhaps under the auspices of the Climate Leaders program. EPA involvement in standard-setting could take many forms, including but not limited to endorsement of one or more existing voluntary standards or convening a stakeholder process to develop an overarching consensus standard.

I recently wrote to Chairman Platt Majoras of the Federal Trade Commission, requesting that the Commission review its guidelines for environmental marketing claims to address the unique issues presented by carbon offsets. I expect that there will be opportunities for fruitful collaboration between FTC and EPA in addressing the interrelated consumer protection and environmental protection aspects of this issue.

I would appreciate hearing from you at your earliest convenience about this request. Please contact me directly or Joel Beauvais of the Select Committee staff (202-225-4012). Thank you for your consideration of this request.

Sincerely,


Edward J. Markey
Chairman

cc: Mr. F. James Sensenbrenner, Jr., Ranking Member

EDWARD J. MARKEY

FOR DISTRICT MASSACHUSETTS

ENERGY AND COMMERCE COMMITTEE

RANKING MEMBER
SUBCOMMITTEE ON
TELECOMMUNICATIONS AND
THE INTERNETSELECT COMMITTEE ON
HOMELAND SECURITY

RESOURCES COMMITTEE

Congress of the United States

House of Representatives

Washington, DC 20515-2107

September 9, 2005

2101 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2107
(202) 225-2830

DISTRICT OFFICES

1400 STANLEY STREET, N.E.
MEDFORD, MA 02155
(781) 306-2000126 CONCORD STREET, SUITE 102
FRAMINGHAM, MA 01901
(508) 875-2900
FAX: (508) 875-2900

The Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Johnson:

I am writing to request information regarding the environmental consequences associated with Hurricane Katrina caused by releases of toxic substances from chemical or other facilities that were damaged by the storm or its aftermath.

As you know, numerous facilities in Louisiana, Mississippi and Florida contain sufficient quantities of certain toxic chemicals to require reporting under the Environmental Protection Agency's (EPA's) Risk Management Program (RMP), which was created as part of the Clean Air Act Amendments in 1990 in response to the Bhopal chemical accident. In fact, according to a recent Congressional Research Service report I requested¹, there are 47-50 facilities in Louisiana at which a worst-case release could put 100,000-999,999 people at risk, as well as 2 facilities that could impact more than 1 million people. In Florida, there exist 21-22 facilities at which a worst-case release could put 100,000-999,999 people at risk and 7 facilities that could impact more than 1 million people, and in Mississippi, there are 2 facilities at which a worst-case release could put 100,000-999,999 people at risk. In addition to facilities that are subject to the EPA RMP reporting requirements, there are also some facilities (i.e. those that store flammable fuels that will be used as fuels) not subject to these requirements but which also pose a risk to the surrounding communities in the event of a worst-case release.

There have already been widespread reports of contamination resulting from leaky chemical and oil and gas facilities in the aftermath of Hurricane Katrina, particularly in Louisiana. Moreover, it is well-known that water reacts with some chemicals to cause even more toxic and sometimes deadly results. A January 2001 article in the Journal of Loss Prevention in the Process Industries concluded that the cause of the chemical accident which caused the hospitalization of almost 900 people in Bogalusa, Louisiana in 1995 was similar to the cause of the 1984 Bhopal accident which killed several thousand people -- the entry of water into a storage vessel. In addition to the impact associated with breaches of storage containers that result in leaking of toxic chemicals into the environment, it is clear that there is also a risk associated with leaks of water into some of these facilities.

¹ Please see http://www.house.gov/markey/Issues/ISS_ChemSec_rept050706.pdf

Handwritten:
J. Markey
564 3168

While some of the chemicals stored in these facilities are integral and necessary to the products or processes being undertaken there, others are not. For example, a 2003 report entitled "Eliminating Hometown Hazards" by Environmental Defense lists several wastewater treatment facilities in Louisiana that use chlorine in amounts that could place hundreds of thousands of people at risk, even though safer and economically competitive alternatives exist and are currently in use elsewhere. Press reports indicate that many wastewater treatment facilities in the areas impacted by Hurricane Katrina have been disabled, but it is unclear as to the status of the stores of toxic chlorine that must have been onsite. Another 2003 report entitled "Needless Risk: Oil Refineries And Hazard Reduction" by the U.S. PIRG Education Fund describes a cost-effective alternative to hydrofluoric acid, which is used by many refineries, including Chalmette Refining in New Orleans which reportedly has 600,000 pounds of hydrofluoric acid stored on site (see the May 22, 2005 New York Times editorial entitled "Inside the Kill Zone"). According to the Energy Information Administration, the Chalmette facility could be closed for months, but it is unclear as to the status of the stores of hydrofluoric acid that must have been onsite.

As the damage assessment and remediation associated with Hurricane Katrina proceeds, I believe it is important not just to evaluate the degree to which releases and environmental contamination may have occurred, but also to take steps to ensure that the contamination that might have been preventable had the chemical facility used a less toxic chemical or process will not recur in the future. Since many of these facilities will already be planning to do some remediation and reparation of the damages sustained (and, in some cases may be applying for federal assistance in order to do so) during the Hurricane and its aftermath, it may be an ideal time to implement transitions to safer technologies and processes in order to minimize the environmental consequences of any future catastrophes. I ask for your prompt responses to the following questions relating to the environmental consequences and remediation plans for the areas impacted by Hurricane Katrina:

- 1) Of the facilities that are subject to EPA RMP reporting requirements that are also located in the areas impacted by Hurricane Katrina, please list a) each facility that has reported damage and/or leaks of materials contained therein, including specific information regarding the nature of the damage/leak, the potential health and environmental consequences thereof and an estimate of the costs of its remediation, b) each facility that has been observed by Federal, State or local Government officials to have sustained damage and/or leaks of materials contained therein, including specific information regarding the nature of the damage/leak and the potential health and environmental consequences thereof and an estimate of the costs of its remediation, c) each facility that contains stores of materials that could, if exposed to water, result in a chemical reaction that could lead to a toxic release.
- 2) Of the facilities containing stores of toxic materials that are not subject to EPA RMP reporting requirements that are also located in the areas impacted by

Hurricane Katrina, please list a) each facility that has reported damage and/or leaks of materials contained therein, including specific information regarding the nature of the damage/leak and the potential health and environmental consequences thereof and an estimate of the costs of its remediation, b) each facility that has been observed by Federal, State or local Government officials to have sustained damage and/or leaks of materials contained therein, including specific information regarding the nature of the damage/leak and the potential health and environmental consequences thereof and an estimate of the costs of its remediation, c) each facility that contains stores of materials that could, if exposed to water, result in a chemical reaction that could lead to a toxic release.

- 3) Please provide specific information regarding all efforts DHS/EPA has undertaken thus far to assess the damages, consequences (environmental, health and economic) and remediation needs associated with any facility containing stores of toxic materials that sustained damages due to Hurricane Katrina. In addition, please provide a specific timeline for all planned future efforts.
- 4) What forms of federal assistance are available to facilities containing stores of toxic materials that sustained damages due to Hurricane Katrina? Please list all available assistance programs, including the amount of funding available to each eligible facility and any conditions associated with receiving the funds. Do any of these programs require that the facility take steps to reduce its risk of sustaining similar damage or to reduce the potential environmental and health consequences of such damages in the future?
- 5) Do you believe that as a condition of receiving federal assistance, facilities containing stores of toxic materials that sustained damages due to Hurricane Katrina should be required to evaluate and, where technologically and economically feasible, implement safer technologies or processes (including measures such as storing smaller quantities of toxic materials onsite) in order to minimize the potential environmental and health consequences of any future similar catastrophes? Why or why not? Do you believe that in at least some cases, if facilities storing toxic chemicals impacted by Hurricane Katrina had used inherently safer substitutes, the damage to human health would have been reduced? If not, why not?
- 6) What forms of federal assistance are available to State and local Governments to assist with their assessment or remediation efforts for the consequences of damages to facilities containing stores of toxic materials due to Hurricane Katrina? Please list all available assistance programs, including the amount of funding available to each eligible facility and any conditions associated with receiving the funds.

Thank you very much for your attention to this important matter. Please contact Dr. Michal Freedhoff of my staff at 202-225-2836 to arrange a timeline for the delivery of your responses.

Sincerely,

Edward J. Markey

Edward J. Markey



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 16 2005

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

The Honorable Edward J. Markey
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter of September 9, 2005, to EPA Administrator Stephen L. Johnson regarding potential hazardous chemical releases from Risk Management Program facilities in areas affected by Hurricane Katrina. Your letter has been referred to me for reply.

Shortly after Hurricane Katrina made landfall, EPA deployed hundreds of emergency response personnel to the affected area to assist in disaster recovery efforts. We are working closely with state and local government officials, as well as other Federal responders, to assess environmental contamination, collect and safely dispose of hazardous waste, evaluate damage to drinking and waste water utilities, and perform other cleanup and recovery work in the affected areas of Louisiana, Mississippi, and Alabama. EPA is conducting similar activities in areas of Texas and Louisiana impacted by Hurricane Rita.

In response to your first three questions, EPA, along with other Federal, state, and local government agencies, is conducting numerous ongoing activities to determine the environmental impacts of Hurricane Katrina, including any potential chemical releases at Risk Management Program facilities, as well as other hazardous chemical facilities and hazardous waste sites. These activities include performing site assessments with on-the-ground teams, conducting environmental monitoring and sampling of air, water and sediment in impacted areas, and performing aerial surveys using EPA's Airborne Spectral Photometric Environmental Collection Technology (ASPECT) aircraft. EPA is coordinating closely with other Federal and State agencies to contact individual facility owners and operators as well as industry association representatives to gain company information on the status of chemical facilities, oil refineries, gas plants, and other industrial facilities in the affected area.

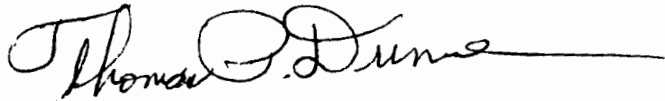
It will likely take several more weeks or longer before the status of every hazardous chemical facility in the affected area is known. However, to date EPA has no information indicating that there have been any major uncontained releases of highly toxic or flammable chemicals from RMP facilities in the affected area. As Hurricane Katrina recovery efforts continue, EPA will continue to coordinate with our Federal, state and local government partners

to monitor facilities in the affected area, and respond as appropriate to any chemical releases that may occur.

With regard to your questions on Federal disaster assistance, EPA administers the Local Government Reimbursement (LGR) Program, which provides up to \$25,000 assistance to local governments for costs related to temporary emergency measures conducted in response to releases or threatened releases of hazardous substances. Information on the LGR program is available on the Agency's website at www.epa.gov/superfund/programs/er/lgr/index.htm. We defer to the Department of Homeland Security to comment on other disaster assistance programs that may be available through the Federal Emergency Management Agency.

Thank you for your interest in EPA's response to Hurricane Katrina. Comprehensive information on our hurricane response efforts is available on the Agency's website at www.epa.gov/katrina. If you have any further questions or comments, please contact me or your staff may contact Josh Lewis in the Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas P. Dunne", followed by a long horizontal line extending to the right.

Thomas P. Dunne
Acting Assistant Administrator

cc: Honorable Michael Chertoff
Secretary of Homeland Security



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 16 2005

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

The Honorable Edward J. Markey
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter of September 9, 2005, to EPA Administrator Stephen L. Johnson regarding potential hazardous chemical releases from Risk Management Program facilities in areas affected by Hurricane Katrina. Your letter has been referred to me for reply.

Shortly after Hurricane Katrina made landfall, EPA deployed hundreds of emergency response personnel to the affected area to assist in disaster recovery efforts. We are working closely with state and local government officials, as well as other Federal responders, to assess environmental contamination, collect and safely dispose of hazardous waste, evaluate damage to drinking and waste water utilities, and perform other cleanup and recovery work in the affected areas of Louisiana, Mississippi, and Alabama. EPA is conducting similar activities in areas of Texas and Louisiana impacted by Hurricane Rita.

In response to your first three questions, EPA, along with other Federal, state, and local government agencies, is conducting numerous ongoing activities to determine the environmental impacts of Hurricane Katrina, including any potential chemical releases at Risk Management Program facilities, as well as other hazardous chemical facilities and hazardous waste sites. These activities include performing site assessments with on-the-ground teams, conducting environmental monitoring and sampling of air, water and sediment in impacted areas, and performing aerial surveys using EPA's Airborne Spectral Photometric Environmental Collection Technology (ASPECT) aircraft. EPA is coordinating closely with other Federal and State agencies to contact individual facility owners and operators as well as industry association representatives to gain company information on the status of chemical facilities, oil refineries, gas plants, and other industrial facilities in the affected area.

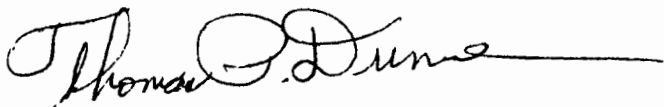
It will likely take several more weeks or longer before the status of every hazardous chemical facility in the affected area is known. However, to date EPA has no information indicating that there have been any major uncontained releases of highly toxic or flammable chemicals from RMP facilities in the affected area. As Hurricane Katrina recovery efforts continue, EPA will continue to coordinate with our Federal, state and local government partners

to monitor facilities in the affected area, and respond as appropriate to any chemical releases that may occur.

With regard to your questions on Federal disaster assistance, EPA administers the Local Government Reimbursement (LGR) Program, which provides up to \$25,000 assistance to local governments for costs related to temporary emergency measures conducted in response to releases or threatened releases of hazardous substances. Information on the LGR program is available on the Agency's website at www.epa.gov/superfund/programs/er/lgr/index.htm. We defer to the Department of Homeland Security to comment on other disaster assistance programs that may be available through the Federal Emergency Management Agency.

Thank you for your interest in EPA's response to Hurricane Katrina. Comprehensive information on our hurricane response efforts is available on the Agency's website at www.epa.gov/katrina. If you have any further questions or comments, please contact me or your staff may contact Josh Lewis in the Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas P. Dunne", followed by a long horizontal line extending to the right.

Thomas P. Dunne
Acting Assistant Administrator

cc: Honorable Michael Chertoff
Secretary of Homeland Security

Congress of the United States
House of Representatives
Washington, DC 20515

February 22, 2005

The Honorable Stephen L. Johnson
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Dear Acting Administrator Johnson:

We would like to express our concerns about the Environmental Protection Agency's (EPA) plans to proceed with a proposed policy guidance that would allow sewage treatment plants to discharge inadequately treated sewage into waterways. Under this proposal, publicly owned treatment works (POTWs) could divert sewage around secondary treatment units, then combine the filtered but untreated sewage with fully treated wastewater before discharge in a process called "blending". Implementing this guidance would effectively lift the current prohibition on bypassing the biological treatment of sewage to remove most pathogens from wastewater, a crucial second treatment step used during periods of wet weather.

We believe that there should be less sewage entering our environment, not more. The proposed guidance is inconsistent with sewage treatment standards required by the Clean Water Act and its implementing regulations. It would undo many of the public health and environmental gains achieved over the last 30 years under the Clean Water Act.

Federal taxpayers have invested billions in sewage treatment infrastructure, resulting in decades of progress in reducing waterborne illness, beach closures, shellfish bed closures, and drinking water contamination. Unfortunately, whenever there is an accidental breach in sewage treatment facilities, we see the repercussions of polluted water to human health, our constituents' livelihoods, and tourism. That is why it is sound economic and environmental policy to invest in effective sewage treatment to ensure that the U.S. has healthy and vibrant aquatic ecosystems and clean water, not to allow more sewage into our environment.

We understand the nature of the problem of excessive solids losses and disruption of the biological treatment stage during periods of heavy inflow of water into the collection system. It is unacceptable, however, to use sewage blending during rain events as a bandage to cover these infrastructure shortfalls. To truly solve this problem, we need to make significant new financial investments in improved wastewater treatment infrastructure.

The EPA should enforce existing Clean Water Act regulations instead of attempting to change the law so that more sewage would enter into the environment where it will make people ill, sicken our wildlife, and contaminate our waters. We also urge the EPA to ask the Office of

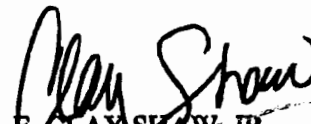
CC 4
Charles
John
Gary
David
Betsy

Management and Budget to provide substantial additional funding for sewage treatment upgrades through the Clean Water State Revolving Fund, as recommended by the U.S. Commission on Ocean Policy. These upgrades include the construction of additional capacity and short-term storage until the sewage can be fully treated.


We find it disappointing that the EPA continues to consider a policy change that would worsen our nation's water quality, and we urge you not to implement the guidance. Thank you for your consideration of this matter.

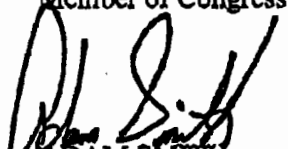
Sincerely,

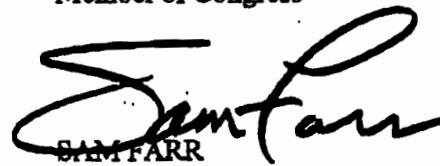

FRANK PALLONE, JR.
Member of Congress


E. CLAY SHAW, JR.
Member of Congress

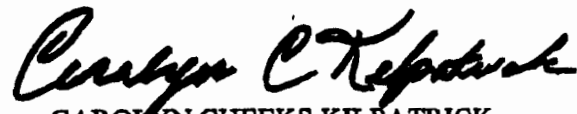

BART STUPAK
Member of Congress


CHRIS VAN HOLLEN
Member of Congress


ADAM SMITH
Member of Congress


SAM FARR
Member of Congress



G.K. BUTTERFIELD
Member of Congress

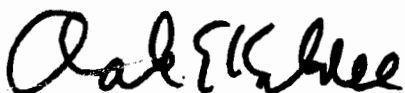

CAROLYN CHEEKS KILPATRICK
Member of Congress


SUSAN DAVIS
Member of Congress

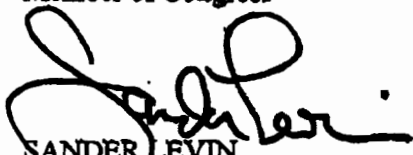

JAMES MORAN
Member of Congress


JIM McDERMOTT
Member of Congress

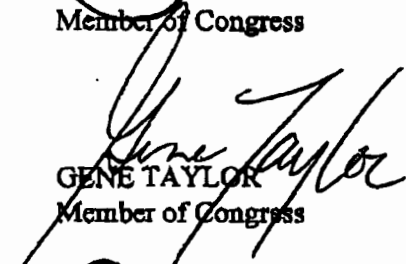

TAMMY BALDWIN
Member of Congress



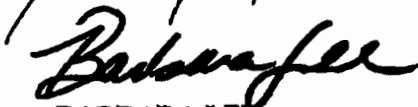
DALE KILDEE
Member of Congress



SANDER LEVIN
Member of Congress



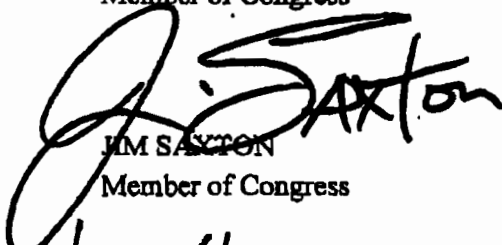
GENE TAYLOR
Member of Congress



BARBARA LEE
Member of Congress



HILDA L. SOLIS
Member of Congress



JIM SAXTON
Member of Congress



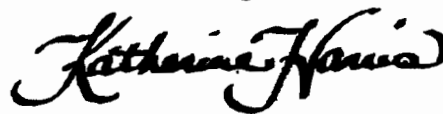
JANE HARMAN
Member of Congress



ED CASE
Member of Congress



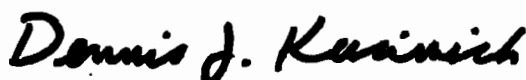
STEVE ROTHMAN
Member of Congress



KATHERINE HARRIS
Member of Congress



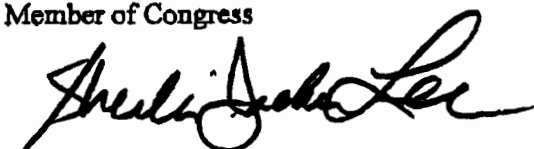
LOIS CAPPS
Member of Congress



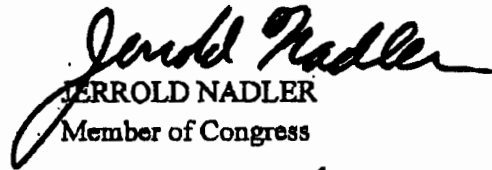
DENNIS KUCINICH
Member of Congress



BERNARD SANDERS
Member of Congress



SHEILA JACKSON-LEE
Member of Congress



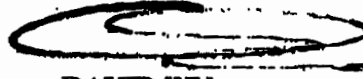
JERROLD NADLER
Member of Congress



LYNN WOOLSEY
Member of Congress



ILEANA ROS-LEHTINEN
Member of Congress



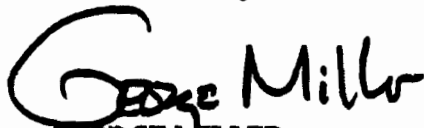
DAVID WU
Member of Congress



ROSA DeLAURO
Member of Congress



ALCEE HASTINGS
Member of Congress



GEORGE MILLER
Member of Congress



MICHAEL M. HONDA
Member of Congress



WAYNE GILCREST
Member of Congress



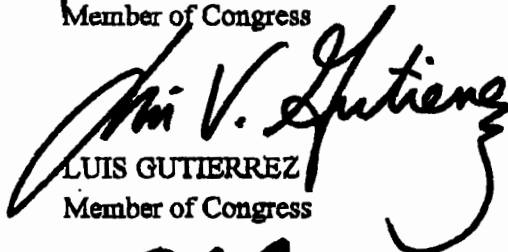
MICHAEL R. McNULTY
Member of Congress



HENRY WAXMAN
Member of Congress



MARTIN OLAV SABO
Member of Congress



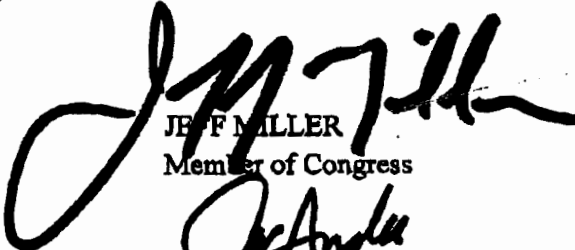
LUIS GUTIERREZ
Member of Congress



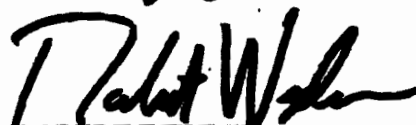
JOHN M. SPRATT, JR.
Member of Congress



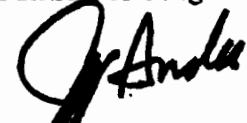
PETER DeFAZIO
Member of Congress



JEFF MILLER
Member of Congress




ROBERT WEXLER
Member of Congress



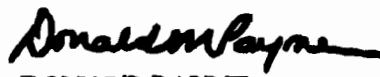
JAY INSLEE
Member of Congress


MARK STEVEN KIRK
Member of Congress


BOB FILNER
Member of Congress


CAROLYN MALONEY
Member of Congress


MAXINE WATERS
Member of Congress

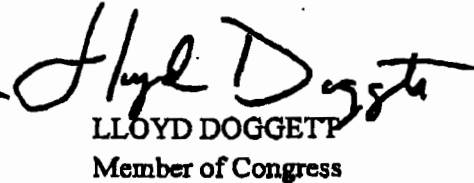

DONALD PAYNE
Member of Congress



HOWARD BERMAN
Member of Congress


DIANA DeGETTE
Member of Congress


RUSH HOLT
Member of Congress


JAN SCHAKOWSKY
Member of Congress


LLOYD DOGGETT
Member of Congress



STEPHANIE TUBBS JONES
Member of Congress


MIKE THOMPSON
Member of Congress


CHRISTOPHER H. SMITH
Member of Congress


ROBERT E. ANDREWS
Member of Congress


RON KIND
Member of Congress


LOUISE SLAUGHTER
Member of Congress



RAHM EMANUEL
Member of Congress



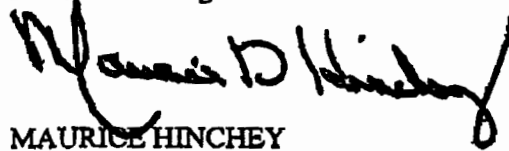
JOHN CONYERS
Member of Congress



GARY ACKERMAN
Member of Congress



SHERROD BROWN
Member of Congress



MAURICE HINCHEY
Member of Congress



JOHN D. DINGELL
Member of Congress



GINNY BROWN-WAITE
Member of Congress



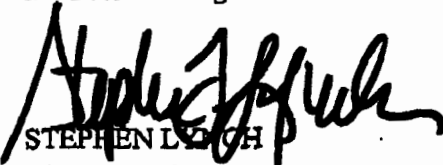
GENE GREEN
Member of Congress



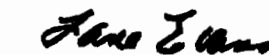
BETTY MCCOLLUM
Member of Congress



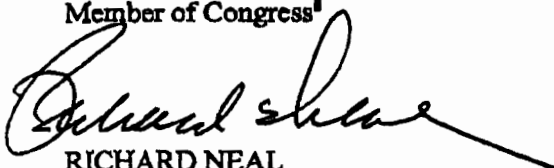
TIMOTHY BISHOP
Member of Congress



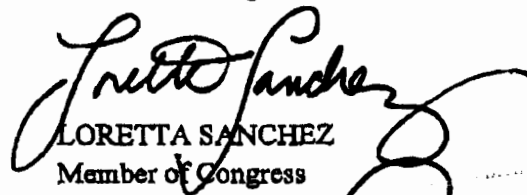
STEPHEN L. LYNCH
Member of Congress



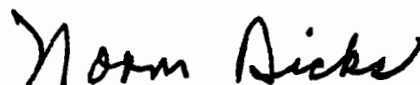
LANE EVANS
Member of Congress



RICHARD NEAL
Member of Congress



LORETTA SANCHEZ
Member of Congress



NORMAN D. DICKS
Member of Congress



CHARLES B. RANGEL
Member of Congress



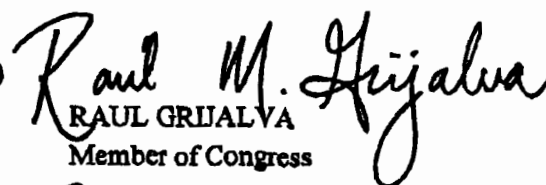
MAYOR R. OWENS
Member of Congress




NITA M. LOWEY
Member of Congress



CYNTHIA McKINNEY
Member of Congress



RAUL GRIJALVA
Member of Congress



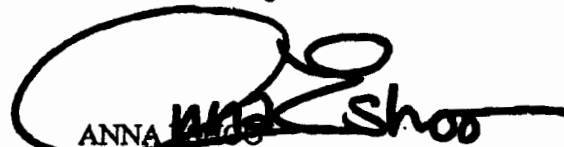
JOSE SERRANO
Member of Congress



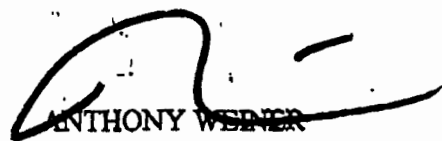
IKE SKELTON
Member of Congress



MELISSA BEAN
Member of Congress



ANNA ESCOBEDO CABRAL
Member of Congress



ANTHONY WEINER
Member of Congress



SHERWOOD BOEHLERT
Member of Congress



FRANK LoBIONDO
Member of Congress



CAROLYN MCCARTHY
Member of Congress



ALLYSON SCHWARTZ
Member of Congress



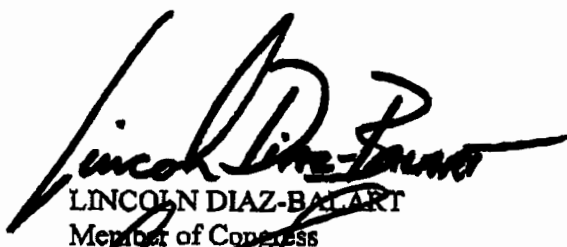
JIM RAMSTAD
Member of Congress



BRIAN HIGGINS
Member of Congress



JOSEPH CROWLEY
Member of Congress



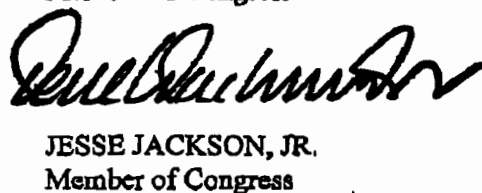
LINCOLN DIAZ-BALART
Member of Congress



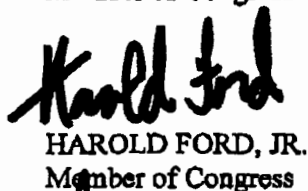
RAY LAHOOD
Member of Congress



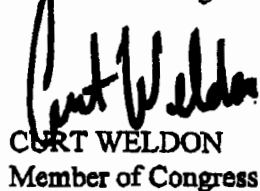
ELIOT ENGEL
Member of Congress



JESSE JACKSON, JR.
Member of Congress



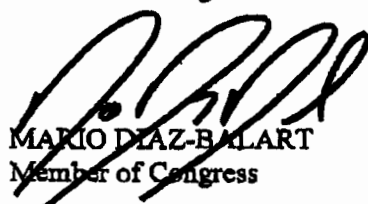
HAROLD FORD, JR.
Member of Congress



CURT WELDON
Member of Congress



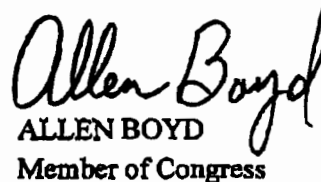
TOM LANTOS
Member of Congress



MARIO DIAZ-BALART
Member of Congress



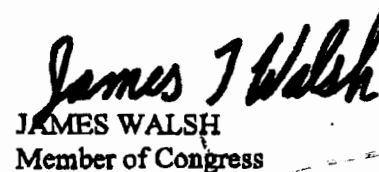
JULIA CARSON
Member of Congress



ALLEN BOYD
Member of Congress



JIM DAVIS
Member of Congress



JAMES WALSH
Member of Congress



JERRY COSTELLO
Member of Congress




MADELEINE BORDALLO
Member of Congress



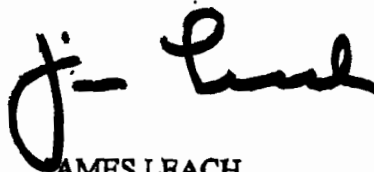
DANIEL LIPINSKI
Member of Congress



MARK FOLEY
Member of Congress



PETER VISCLOSKY
Member of Congress



JAMES LEACH
Member of Congress



JOHN SHIMKUS
Member of Congress



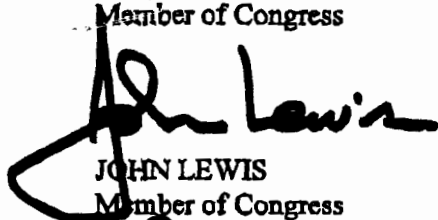
JOHN OLVER
Member of Congress



CLIFF STEARNS
Member of Congress



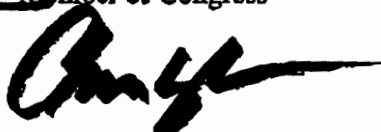
ELIJAH CUMMINGS
Member of Congress



JOHN LEWIS
Member of Congress




JOHN MICA
Member of Congress



CHRISTOPHER SHAYS
Member of Congress



CONNIE MACK
Member of Congress



TODD RUSSELL PLATTS
Member of Congress



ROBERT MENENDEZ
Member of Congress



DEBBIE WASSERMAN-SCHULTZ
Member of Congress



SHELLEY BERKLEY
Member of Congress



KENDRICK MEEK
Member of Congress



MICHAEL CASTLE
Member of Congress

Bill Pascrell Jr
BILL PASCRELL, JR.
Member of Congress

Ted Strickland
TED STRICKLAND
Member of Congress

Chaka Fattah
CHAKA FATTAH
Member of Congress

Brian Baird
BRIAN BAIRD
Member of Congress

Ellen Tauscher
ELLEN TAUSCHER
Member of Congress

Edward J. Markey
EDWARD MARKEY
Member of Congress

Corrine Brown
CORRINE BROWN
Member of Congress

Rick Larsen
RICK LARSEN
Member of Congress

Eddie Bernice Johnson
EDDIE BERNICE JOHNSON
Member of Congress

James L. Oberstar
JAMES L. OBERSTAR
Member of Congress

Danny K. Davis
DANNY DAVIS
Member of Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR - 1 2005

OFFICE OF
WATER

The Honorable Edward Markey
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Markey:

Thank you for your February 22, 2005, letter regarding the Environmental Protection Agency's (EPA) draft guidance entitled "National Pollutant Discharge Elimination System (NPDES) Permit Requirements for Municipal Wastewater Treatment Discharges During Wet Weather Conditions." I want to express my appreciation for your interest in this important issue and to assure you that your comments will be carefully considered as we decide how best to proceed. Let me also emphasize that as we make this decision, EPA's focus will be on providing the public with protection from exposure to contaminants, including pathogens, and ensuring access to clean, safe, and secure water nationwide.

Again, thank you for your letter. I appreciate your concern for the health and safety of the public and the environment. Please contact me if you have any questions, or your staff may contact Steve Kinberg, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-5037.

Sincerely,

A handwritten signature in black ink, which appears to read "B. H. Grumbles", is positioned above the printed name.

Benjamin H. Grumbles
Assistant Administrator

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 20% Postconsumer)

AL-0400127

Congress of the United States

Washington, DC 20515

January 27, 2004

Administrator Michael O. Leavitt
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Leavitt,

We write today on behalf of our constituents to urge you to hold at least one public hearing in New England (Environmental Protection Agency Region 1) on the recently issued mercury rules for electric power plants and to extend the public comment period on the rules by 30 days. In your effort to finalize regulations that have taken over a decade to develop, EPA should not limit the public's ability to participate by limiting the comment period to 60 days and by holding only one or two public hearings.


As a potent neurotoxin, mercury contamination is of great concern to us. In a January 2003 report, the Centers for Disease Control and Prevention report found that 1 in 12 women of childbearing age has mercury levels above EPA's safe health threshold. Nationally, this translates into nearly 4.9 million women of childbearing age with elevated levels of mercury from eating contaminated fish and approximately 322,000 newborns at risk of neurological impairment from exposure *in utero*. In Massachusetts, there is a statewide fish consumption advisory that advises children and women who may become pregnant to limit the locally-caught fish they eat.


Mercury contamination is also a threat to recreational fishing—a vital piece of our national and state economies. Recreational fishing is a multibillion dollar industry. In 2001 alone, recreational fishermen spent nearly \$465 million in Massachusetts. Studies indicate that mercury contamination has a direct impact on where people choose to fish, how often they go, and for how long they choose to fish. Thus, as mercury pollution increases, detrimental impacts to our national and state economies can be anticipated.

A strong Environmental Protection Agency mercury standard will trigger results. Recent research documents the ability for ecosystems to recover from elevated mercury levels. The Florida Department of Environmental Protection – in conjunction with the EPA – has found that only a few years after dramatically reducing mercury emissions from incinerators in southern Florida, mercury levels in fish decreased to the point where some consumption advisories were removed.

Thank you and we look forward to your response.

Sincerely,


Edward J. Markey
Member of Congress

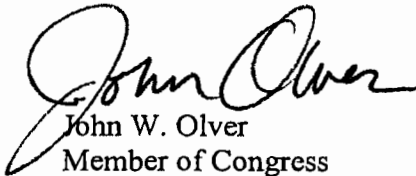

Barney Frank
Member of Congress



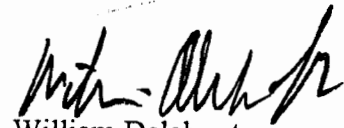
Richard E. Neal
Member of Congress



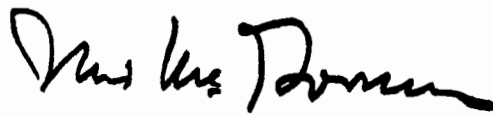
Michael Capuano
Member of Congress



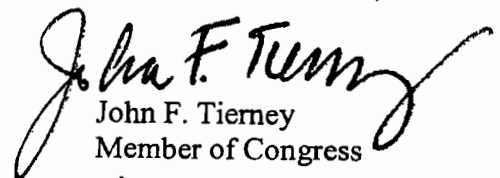
John W. Olver
Member of Congress



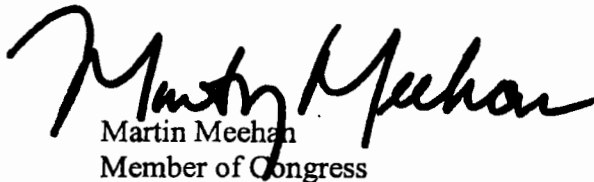
William Delahunt
Member of Congress



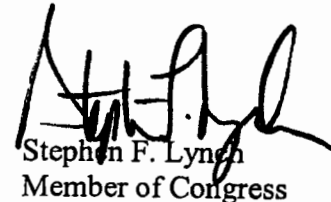
James P. McGovern
Member of Congress



John F. Tierney
Member of Congress



Martin Meehan
Member of Congress



Stephen F. Lynch
Member of Congress



11C-040827
C/o

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 22 2004

THE ADMINISTRATOR

The Honorable Edward J. Markey
U. S. House of Representatives
Washington, DC 20515

Dear Congressman Markey:

Thank you for your letter of January 27, 2004, co-signed by nine of your colleagues, in which you requested an extension of the comment period on our proposed emission standards for electric utility steam generating units. In that letter, you also requested that we hold a public hearing in New England (Region 1). I understand your interest that all members of the public be provided an ample opportunity to comment on the Environmental Protection Agency's (EPA) plans to regulate mercury (and nickel) from this industry sector.

As you know, in our December 15, 2003, proposal, EPA outlined alternative approaches: (1) traditional, command-and-control regulations under section 112 of the Clean Air Act (CAA), generally known as the maximum achievable control technology (MACT) approach and, (2) a market-based cap-and-trade approach under section 111 of the CAA. In addition, on February 24, 2004, the Agency released a supplement to this proposal.

In addition, on December 17, 2003, I signed the Interstate Air Quality Rule (IAQR) proposal, which is designed to dramatically reduce and permanently cap emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) in 29 Eastern States. We have coordinated the proposed IAQR with the implementation of the proposed CAA section 111 approach for regulating mercury from utility units, thus providing a multipollutant strategy for achieving significant emissions reductions from the utility sector. We believe that a multipollutant approach to regulating SO₂, NO_x, and mercury from the utility sector provides a cost-effective and environmentally beneficial strategy for reducing air pollution from the power sector.

The proposed regulations under section 111 and 112 of the CAA and the IAQR proposal were published in the Federal Register January 30, 2004. The public will have 60 days from this publication date to submit comments. Since we posted these December 2003 notices on the Agency's website soon after I signed them, the public will have had significantly more than 60 days to provide comments. I have decided to extend the public comment period; rather than closing on March 30, 2004, as originally indicated, it will now close on April 30, 2004.

We held public hearings on February 25-26, 2004, in Research Triangle Park, North Carolina; Philadelphia, Pennsylvania; and Chicago, Illinois. We received requests to host hearings from several states across the Northeast and selected Philadelphia because it is accessible to citizens from across the northeast and convenient to major metropolitan centers such as New York City and Washington D.C. The three hearings provided members of the public an additional opportunity to comment on both the proposed rules for mercury (and nickel) from electric steam generating units and on the proposed IAQR. In addition, on March 31, EPA will hold a meeting to listen to public comment on the supplement proposal. The hearing will take place at the Hyatt Regency Denver, 1750 Welton Street, Denver, Colorado. We invite comments on these important issues and will carefully consider those comments and related information during the development of the final rule.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Pete Pagano, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-3678.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael O. Leavitt", with a stylized flourish at the end.

Michael O. Leavitt

DOC HASTINGS, WA
 CHAIRMAN
 DON YOUNG, AK
 JOHN J. DUNCAN, JR., TN
 LOUIE GOHMERT, TX
 ROB BISHOP, UT
 DOUG LAMBORN, CO
 ROBERT J. WITTMAN, VA
 PAUL C. BROLIN, GA
 JOHN FLEMING, LA
 MIKE COFFMAN, CO
 TOM MCCLINTOCK, CA
 GLENN THOMPSON, PA
 JEFF DENHAM, CA
 DAN BENISHKE, MI
 DAVID RIVERA, FL
 JEFF DUNCAN, SC
 SCOTT R. TIPTON, CO
 PAUL A. GOSAR, AZ
 RAUL R. LABRADOR, ID
 KRISTI L. NOEM, SD
 STEVE SOUTHERLAND II, FL
 BILL FLORES, TX
 ANDY HARRIS, MD
 JEFFREY M. LANDRY, LA
 JON RUNYAN, NJ
 BILL JOHNSON, OH
 MARK AMODEI, NV

TODD YOUNG
 CHIEF OF STAFF

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

August 31, 2012

EDWARD J. MARKEY, MA
 RANKING DEMOCRATIC MEMBER
 DALE E. KILDEE, MI
 PETER A. DEFazio, OR
 ENI F.H. FALOMAVAEGA, AS
 FRANK PALLONE, JR., NJ
 GRACE F. NAPOLITANO, CA
 RUSH D. HOLT, NJ
 RAUL M. GRIJALVA, AZ
 MADELINE Z. BORDALLO, GU
 JIM COSTA, CA
 DAN BOREN, OK
 GREGORIO KILILI CAMACHO SABLAN, CNMI
 MARTIN HEINRICH, NM
 BEN RAY LUJAN, NM
 JOHN P. SARBANES, MD
 BETTY SUTTON, OH
 NIKI TSONGAS, MA
 PEDRO R. PIERLUISI, PR
 JOHN GARAMENDI, CA
 COLLEEN W. HANABUSA, HI
 PAUL TONKO, NY

JEFFREY DUNCAN
 DEMOCRATIC STAFF DIRECTOR

The Honorable Lisa Jackson
 Administrator
 U.S. Environmental Protection Agency
 Ariel Rios Building
 1200 Pennsylvania Avenue, N.W.
 Washington, DC 20460

Dear Administrator Jackson:

As Hurricane Isaac barreled into the Gulf of Mexico with 100 mile-per-hour winds, it was estimated that as much as 1 million barrels of oil buried in the Gulf of Mexico sediment since the BP Deepwater Horizon disaster would be stirred up and mixed into the waters of the Gulf¹. As emergency responders deal with the impacts of this storm on land, I am writing to understand the plans the National Oceanic and Atmospheric Administration (NOAA) has to deal with the impacts the BP oil will have on the beaches and marshlands.

More than two years have passed since the explosion aboard the Deepwater Horizon drilling rig caused a massive blowout from the BP Macondo well. It took 87 days until the well was capped and oil flow halted. During the spill an unprecedented amount of oil was released into the Gulf of Mexico, making it the largest marine oil spill in U.S. history. Estimates place the volume of oil released at nearly 5 million barrels. As part of the efforts to mitigate the impacts of this catastrophic oil spill, millions of gallons of chemical dispersant were added to the Gulf waters, contributing to a stew of chemicals, oil and gas with impacts that are still not fully understood. Although smaller storms have hit the Gulf over the last 2 years, Isaac was the first hurricane to hit the area since this worst oil spill in U.S. history. According to the U.S. National Hurricane Center, the storm reached winds of as high as 80 miles-per-hour with a storm surge of 12 feet as it hit land.

As the storm passed, any oil carried by the winds and storm surge could be pushed deeper into the marshlands and potentially back onto land, re-igniting the potential for this oil to impact the plants and animals that thrive in the swamps and marshes. Furthermore, oil that has settled into the sediment in swallower areas of the Gulf

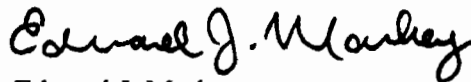
¹ <http://www.businessweek.com/news/2012-08-28/louisiana-plans-for-gulf-oil-dredged-by-isaac-s-force>

may have been churned up to the surface. In light of these environmental concerns, I am writing to determine what steps EPA will take to deal with these potential risks. Therefore, I respectfully, ask that you respond to the following questions by close of business on September 14, 2012:

1. What is EPA's experience dealing with past storm activity in the Gulf of Mexico? Have past smaller storms caused oil to resurface? If so, can you please describe any environmental impacts it may have had, and how EPA responded and/or remediated any such damages?
2. What interaction does the EPA have with other federal agencies in addressing the potential environmental risk from oil that may be churned up during a strong storm?
3. What tools does the EPA employ in dealing with weathered oil that resurfaces during a storm? Does the EPA view this as another opportunity to remove and remediate oil that would otherwise be inaccessible in the sediment?

Thank you for your assistance and cooperation in responding to this request. Should you have any questions, please have your staff contact Dr. Avenel Joseph of the Natural Resources Democratic staff at 202-225-2836.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward J. Markey". The signature is fluid and cursive, with the first name "Edward" and last name "Markey" clearly distinguishable.

Edward J. Markey
Ranking Member
Natural Resources Committee



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV - 7 2012

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

The Honorable Edward J. Markey
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter of August 31, 2012, to the U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson, regarding the plans the EPA has to deal with the impacts that oil from the Deepwater Horizon spill will have on the beaches and marshlands of the Gulf of Mexico. I share your concerns about the impacts of oil in the Gulf.

Enclosed, please find responses to your questions. If you have further questions, please contact me or your staff may contact Carolyn Levine in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-1859.

Sincerely,

A handwritten signature in black ink that reads "Mathy Stanislaus". The signature is written in a cursive, flowing style.

Mathy Stanislaus
Assistant Administrator

Enclosure

Enclosure

1. *What is EPA's experience dealing with past storm activity in the Gulf of Mexico? Have past smaller storms caused oil to resurface? If so, can you please describe any environmental impacts it may have had, and how EPA responded and/or remediated any such damages?*

In the past, storm activity in the Gulf of Mexico may have resulted in tar balls washing ashore; however, following Hurricane Isaac, the National Response Center (NRC) received a number of reports of tar balls on Gulf Coast beaches. Since this occurred in the coastal zone, the response was led by the U.S. Coast Guard (USCG) in their role of overseeing BP's shoreline assessment and continued cleanup.

2. *What interaction does the EPA have with other federal agencies in addressing the potential environmental risk from oil that may be churned up during a strong storm?*

The EPA and the U.S. Coast Guard (USCG) share responsibility for responding to and addressing the potential environmental risk from oil and hazardous substance incidents. The EPA has the jurisdictional lead for oil and hazardous substance incidents occurring in the inland zone, while the USCG has jurisdiction over the coastal zone. If after a strong storm, an oil spill or resurfacing of oil occurs within the coastal zone, the USCG would have the lead in the response. In such a case, the EPA has a supporting role and may provide technical and/or response expertise and resources for addressing the potential environmental risk at the request of the USCG. The Federal On-Scene Coordinator (FOSC) is the federal official predesignated by EPA or the USCG to coordinate and direct response efforts under the National Oil and Hazardous Substance Pollution Contingency Plan (NCP).

As mandated under Executive Order 12777 (EO 12777), the primary bodies through which federal agencies coordinate planning and preparedness activities are the National Response Team (NRT) and the 13 Regional Response Teams (RRTs). The chair and vice chair of the NRT are the EPA and the USCG, respectively. The EPA and USCG serve as co-chairs on each of the RRTs. The RRTs are the body responsible for regional planning and preparedness activities and for providing advice and support to FOSCs during a response. Federal membership on the NRT and RRTs consists of the agencies specified in EO 12777. The states and recognized tribes are also represented on the RRTs.

The Federal Emergency Management Agency (FEMA) is the lead federal coordinating agency for presidential declared natural disasters, and under the National Response Framework (NRF), the EPA is the lead agency under Emergency Support Function #10 (oil and hazardous substances). At this time, neither the EPA nor USCG has been tasked by FEMA under ESF-10 to respond to oil nor hazardous substance spills in the Hurricane Isaac disaster declared portions of the Gulf coast.

3. *What tools does EPA employ in dealing with weathered oil that resurfaces during a storm? Does the EPA view this as another opportunity to remove and remediate oil that would otherwise be inaccessible in the sediment?*

In the event that the USCG requests the EPA assistance for dealing with weathered oil that resurfaces during a storm, the EPA has access to technical and cleanup support through the EPA Special Team personnel and can activate additional support through contract services.

Because the USCG led the Deepwater Horizon response, the EPA does not direct the removal or remediation of oil that washes ashore from submerged sediment. In addition, as discussed above, the EPA does not oversee continuing BP shoreline assessment and tar ball collection activities on the Gulf Coast, some of which may be attributable to the Deepwater Horizon disaster.

Congress of the United States

Washington, DC 20515

August 8, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

We are writing in regard to the definition of "diesel fuel" that EPA will use in its upcoming guidance on permitting for oil and gas hydraulic fracturing activities.

The 2005 Energy Policy Act exempted hydraulic fracturing from the Safe Drinking Water Act unless the fluid injected contains diesel fuel. For that reason, the way in which EPA defines this term has far-reaching consequences. We encourage you to adopt a definition of "diesel fuel" that is broad enough to protect human health and to address the specific reason why Congress singled out diesel fuel in the law—because it often contains benzene, toluene, ethylbenzene and xylenes (the BTEX compounds).

In a 2004 report, EPA stated that the "use of diesel fuel in fracturing fluids poses the greatest threat" to underground sources of drinking water.¹ EPA called diesel fuel "the additive of greatest concern because it introduces BTEX compounds" into the geologic formation, from which the chemicals could then migrate into sources of drinking water.² The Department of Health and Human Services, the International Agency for Research on Cancer, and the EPA have all determined that benzene is a human carcinogen. Long term exposure to the chemicals toluene, ethylbenzene, or xylenes also have significant health impacts as they can damage the central nervous system, liver, and kidneys.

These concerns about diesel and the BTEX compounds contained in diesel led EPA to negotiate a memorandum of agreement with the three largest hydraulic fracturing providers to voluntarily stop using diesel fuel when performing hydraulic fracturing in underground sources of drinking water.³ Congress also specified in the Energy Policy

¹ U.S. Environmental Protection Agency, Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coal bed Methane Reservoirs (June 2004) (EPA816-R-04-003) at 4-11.

² *Id.* at ES-12.

³ Memorandum of Agreement between the U.S. Environmental Protection Agency and BJ Services Company, Halliburton Energy Services, Inc., and Schlumberger Technology Corporation (Dec. 12, 2003).

Act of 2005 that the requirements of the Safe Drinking Water Act underground injection control program still apply to the use of diesel fuel in hydraulic fracturing fluids.⁴

We understand that some stakeholders have suggested that EPA limit its definition of diesel fuel to fuels sold in the United States for use in a diesel engine. Others have suggested limiting the definition to a small number of diesel formulations with specific Chemical Abstracts Service (CAS) identifying numbers, citing as justification a report the Energy and Commerce Committee Democrats sent you on January 31, 2011.⁵ In that report, Democratic Committee staff calculated the volume of hydraulic fracturing products containing diesel fuel with three specific CAS numbers. The report focused on those three types of diesel fuel because of data limitations, not because the permitting requirement in the Energy Policy Act applies only to these three specific diesel types. The goal of the report was to reveal to policy-makers and the public that oil and gas companies have continued to use diesel fuel in hydraulic fracturing fluids without a permit, not to define what constitutes a diesel fuel.

When EPA raised concerns about the use of diesel fuel in hydraulic fracturing fluids and Congress acted on those concerns, there was no intent to restrict scrutiny to diesel fuels with a particular CAS number or with a certain sulfur content. Instead, diesel fuel was singled out for regulation because of the BTEX components contained in the diesel formulations. Limiting the definition of diesel fuel to only a slim set of CAS numbers or only to diesel fuels legally sold in the United States for use in a diesel engine would not be consistent with Congress's intent. It could result in a scenario in which hydraulic fracturing companies could use many forms of diesel fuel without obtaining a permit—even if the fuel contained BTEX compounds—because the diesel formulation fell outside the scope of a narrow definition.⁶

How “diesel fuel” is defined is a vital issue as the agency crafts guidance for permitting diesel fuel use for hydraulic fracturing. Since federal law contains no public disclosure requirements for hydraulic fracturing fluids, this guidance offers an opportunity to clarify permitting requirements and increase consistency and transparency of program implementation in a way that serves to protect public health and drinking water supplies. We urge you to craft a definition that provides consistency to industry while serving to protect public health and the environment.

⁴ 42 U.S.C. § 300h(d)

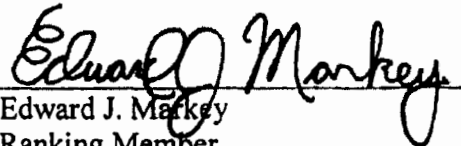
⁵ Letter from Henry A. Waxman, Edward J. Markey, and Diana DeGette to EPA Administrator Lisa Jackson (Jan. 31, 2011) (online at <http://democrats.energycommerce.house.gov/sites/default/files/documents/Jackson.EPADieselFracking.2011.1.31.pdf>).

⁶ For example, if EPA limited the definition of diesel to the three CAS categories examined in the Energy and Commerce Committee study, that could have the unintended consequence of excluding other diesel fuel formulations from appropriate permit requirements. For instance, fuel oil #4 is used in some diesel engines. The Committee did not obtain any evidence that oil and gas companies currently use fuel oil #4 in hydraulic fracturing; however, excluding it from permitting requirements would not be appropriate given its chemical composition.

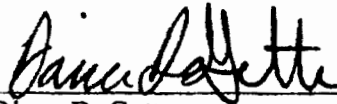
Sincerely,



Henry A. Waxman
Ranking Member
Committee on Energy and Commerce



Edward J. Markey
Ranking Member
Committee on Natural Resources



Diana DeGette
Ranking Member
Subcommittee on Oversight and
Investigations
Committee on Energy and Commerce



Rush Holt
Ranking Member
Subcommittee on Energy and
Mineral Resources
Committee on Natural Resources



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 23 2012

OFFICE OF WATER

The Honorable Edward Markey
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter dated August 8, 2011, to Lisa P. Jackson, Administrator of the U.S. Environmental Protection Agency (EPA) with regard to the definition of "diesel fuels" that the EPA will use in its upcoming guidance on permitting for oil and gas hydraulic fracturing activities. Because my office is responsible for implementing the Underground Injection Control (UIC) program, I have been asked to respond to your letter.

The EPA appreciates your interest in and contribution to the development of a description of diesel fuels to be included in forthcoming UIC program guidance. In developing a description of diesel fuels for UIC permitting purposes, the EPA consulted a wide range of stakeholders during webinars held in May and June 2011, including federal and state agencies, environmental organizations, the oil and gas industry, and concerned citizens. The EPA is carefully considering your suggestions and the suggestions of other stakeholders in developing an approach to describing what diesel fuels are for the purposes of hydraulic fracturing and the guidance. In addition, we reviewed descriptions already in use by the EPA regulatory programs, other federal agencies, and industry sources such as the American Society for Testing and Materials (ASTM). We plan to release the guidance with the diesel fuels description for public comment in early 2012.

Again, thank you for your letter. The EPA appreciates your concern and interest in our efforts to protect human health and the environment. If you have further questions, please contact me or your staff may call Pamela Janifer in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-6969.

Sincerely,

A handwritten signature in black ink, appearing to read "N. Stoner", is written over a horizontal line.

Nancy K. Stoner
Acting Assistant Administrator

AL-12-001-4400



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 24 2012

THE ADMINISTRATOR

The Honorable Ed Markey
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Markey:

I am pleased to renew the charter of the National Advisory Committee in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The National Advisory Committee is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The committee will be in effect for two years from the date the charter is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina J. Moody in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa P. Jackson", written over a horizontal line.

Lisa P. Jackson

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

NATIONAL ADVISORY COMMITTEE TO THE UNITED STATES REPRESENTATIVE TO THE NORTH AMERICAN COMMISSION FOR ENVIRONMENTAL COOPERATION

1. **Committee's Official Designation (Title):**

National Advisory Committee to the United States Representative to the North American Commission for Environmental Cooperation

2. **Authority:**

This charter renews the National Advisory Committee (NAC) to the United States Representative to the Council of the Commission for Environmental Cooperation (CEC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The NAC is in the public interest and advises the U.S. Representative on implementation and elaboration of the North American Agreement on Environmental Cooperation (NAAEC). Establishment of the committee is authorized under article 17 of the NAAEC and by the North American Free Trade Agreement Implementation Act, P.L. 103-182, which authorizes U.S. participation in the CEC. Federal government responsibilities relating to the committee are set forth in Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation."

3. **Objectives and Scope of Activities:**

The NAC will provide advice, information and recommendations on a broad range of environment-related strategic, scientific, technological, regulatory and economic issues to be addressed in implementation and elaboration of the NAAEC.

4. **Description of Committee's Duties:**

The duties of the NAC are solely to provide advice to EPA.

5. **Official(s) to Whom the Committee Reports:**

The NAC will submit advice and recommendations and report to the Environmental Protection Agency (EPA) Administrator, who serves as the United States Representative to the Council of the CEC under the authority of Executive Order 12915.

6. Agency Responsible for Providing the Necessary Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Federal Advisory Committee Management and Outreach, within the Office of the Administrator.

7. Estimated Annual Operating Costs and Work Years:

The estimated annual operating cost of the NAC is \$166,000 which includes 0.7 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

The NAC expects to meet approximately three (3) times a year. Meetings may occur approximately once every four (4) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the NAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of Section 552(b) of Title 5, U.S.C. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the NAC.

10. Duration and Termination:

This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

The NAC will be composed of approximately twelve (12) members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from the following stakeholder categories: environmental groups and non-profit entities, business and industry, and educational institutions.

12. Subgroups:

EPA, or the NAC with EPA approval, may form NAC subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the NAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the U.S. Representative to the Council of the CEC.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

August 10, 2012

Agency Approval Date

AUG 24 2012

Date Filed with Congress

Congress of the United States
Washington, DC 20515

September 19, 2011

The Honorable Lisa Jackson
EPA Administrator
Ariel Rios Building
1200 Pennsylvania Ave NW
Washington, DC 20460

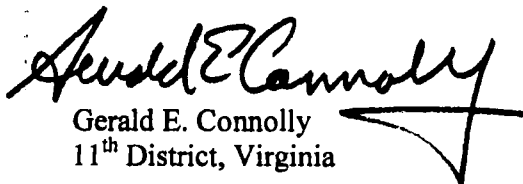
Dear Administrator Jackson,

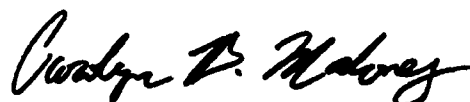
We are writing to express our support for the Environmental Protection Agency's final Cross-State Air Pollution Control Rule. This important public health standard will prevent approximately 34,000 premature deaths, more than 15,000 heart attacks, 19,000 cases of acute bronchitis, 400,000 cases of aggravated asthma, and 1.8 million lost workdays annually. The aggregate health benefits will save up to \$280 billion annually in avoided costs, at a cost of only \$800 million. This 350-1 benefit to cost ratio represents a great deal for the public and an opportunity to improve the quality of life and competitiveness of American metropolitan areas. In concert with other improvements to state and federal regulations, it will reduce sulfur dioxide and nitrogen oxide by 73% and 54%, respectively, by 2014.

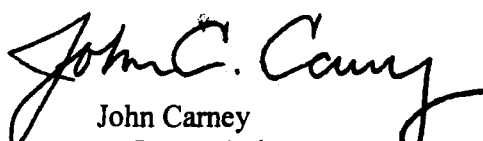
The Cross-State Air Pollution Control Rule finally ends decades of failure to control air pollution at its source. For too long, highly polluting facilities located upwind have been allowed to pollute major metropolitan areas with impunity. In fact, those sources of pollution have made it impossible for most major metropolitan areas to come into compliance with federal standards for smog pollution. As a result, local and state governments have had to spend more money on local pollution mitigation even when most pollution is generated by large upwind sources. We applaud your efforts to make polluters control pollution at the source rather than continuing to shift the cost burden onto local governments and local taxpayers.

Thank you again for your leadership on this important issue. We look forward to dramatic improvements in air quality as a result of this important public health standard.

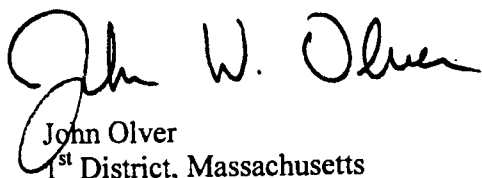
Sincerely,

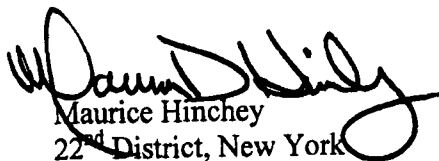

Gerald E. Connolly
11th District, Virginia

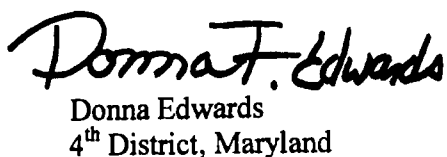

Carolyn Maloney
14th District, New York

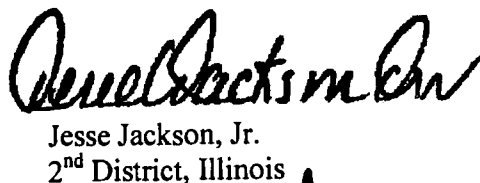

John Carney
At Large, Delaware

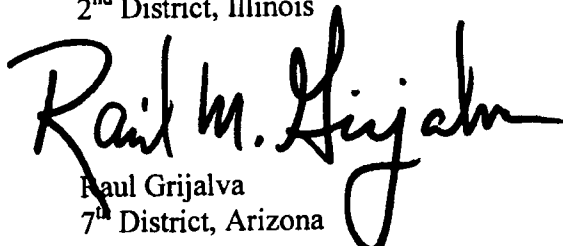

Mike Quigley
5th District, Illinois

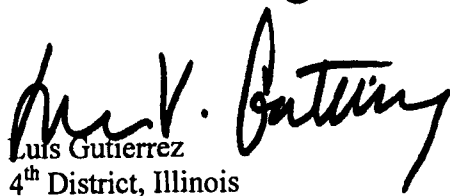

John Olver
1st District, Massachusetts


Maurice Hinchey
22nd District, New York

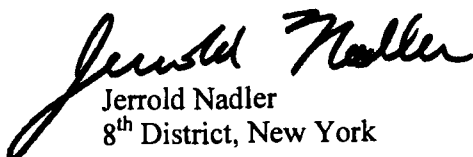

Donna Edwards
4th District, Maryland

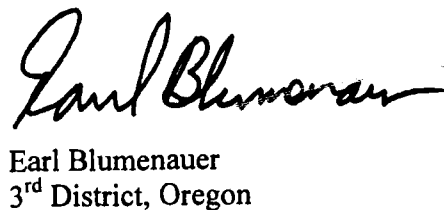

Jesse Jackson, Jr.
2nd District, Illinois

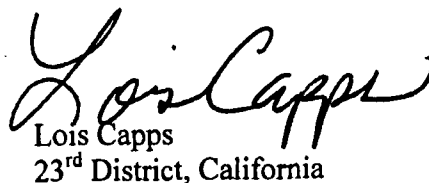

Paul Grijalva
7th District, Arizona

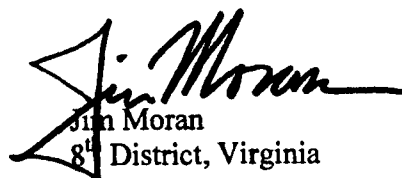

Luis Gutierrez
4th District, Illinois

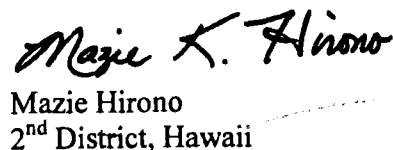

Jim Langevin
2nd District, Rhode Island

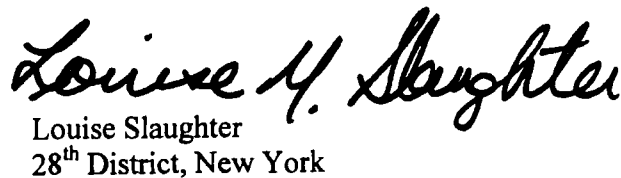

Jerrold Nadler
8th District, New York

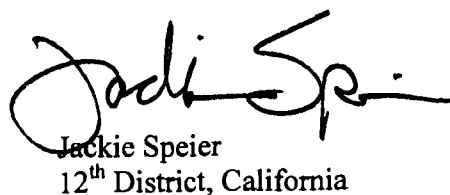

Earl Blumenauer
3rd District, Oregon

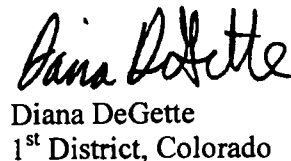

Lois Capps
23rd District, California


Jim Moran
8th District, Virginia


Mazie Hirono
2nd District, Hawaii


Louise Slaughter
28th District, New York

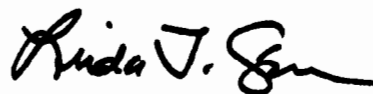

Jackie Speier
12th District, California


Diana DeGette
1st District, Colorado

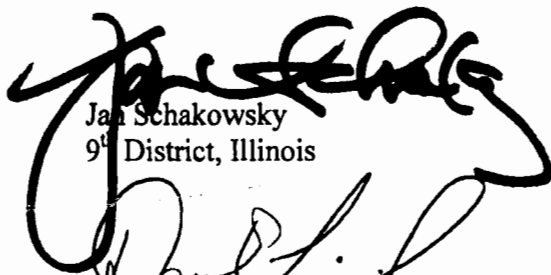

Maxine Waters
35th District, California



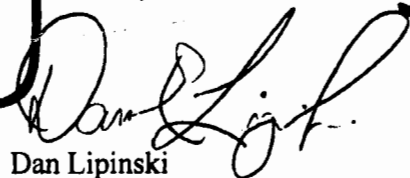
Mike Honda
15th District, California



Linda Sanchez
39th District, California



Jan Schakowsky
9th District, Illinois



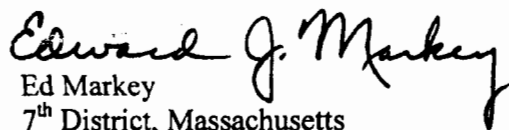
Dan Lipinski
3rd District, Illinois



Emanuel Cleaver
5th District, Missouri



David Price
4th District, North Carolina



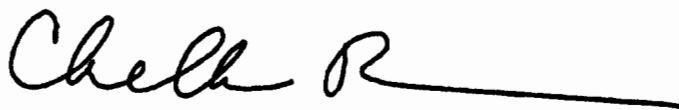
Ed Markey
7th District, Massachusetts



Keith Ellison
5th District, Minnesota



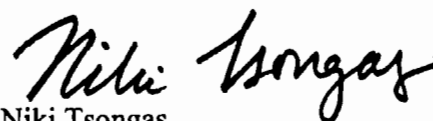
Bob Filner
51st District, California



Chellie Pingree
1st District, Maine



Steve Cohen
9th District, Tennessee



Niki Tsongas
5th District, Massachusetts



Gwen Moore
4th District, Wisconsin



Pete Stark
13th District, California



David Cicilline
1st District, Rhode Island



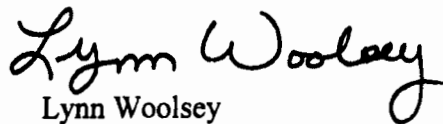
Danny K. Davis
7th District, Illinois



Joe Courtney
2nd District, Connecticut



Jose Serrano
16th District, New York



Lynn Woolsey
6th District, California



Howard Berman
28th District, California



Christopher S. Murphy
5th District, Connecticut



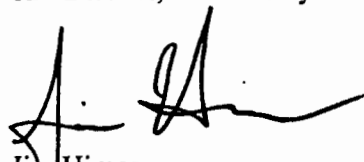
Donna Christensen
At-Large, Virgin Islands



Rush Holt
12th District, New Jersey



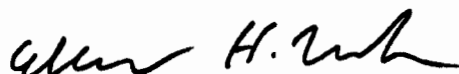
Barbara Lee
9th District, California



Jim Himes
4th District, Connecticut



Chris Van Hollen
8th District, Maryland



Eleanor Holmes Norton
At-Large, District of Columbia



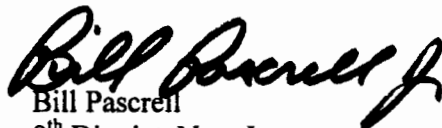
Betty McCollum
4th District, Minnesota



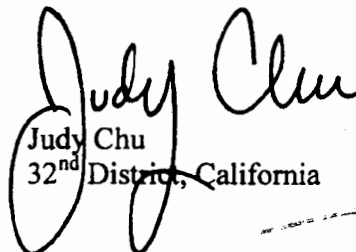
Anna Eshoo
14th District, California



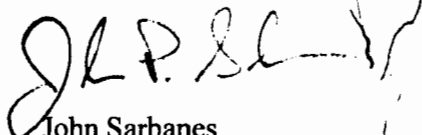
Jerry McNerney
1st District, California



Bill Pascrell
8th District, New Jersey



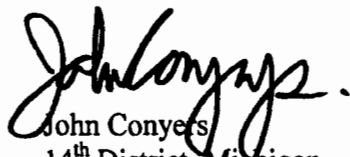
Judy Chu
32nd District, California



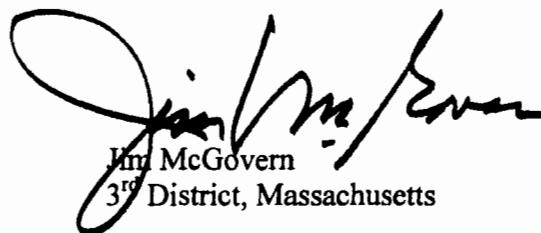
John Sarbanes
3rd District, Maryland



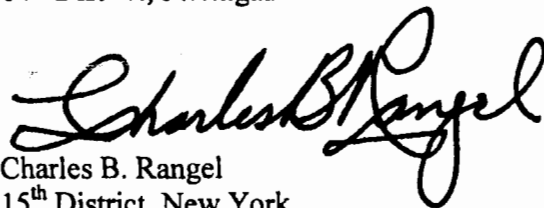
Robert Brady
1st District, Pennsylvania



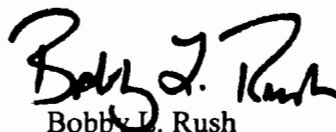
John Conyers
14th District, Michigan



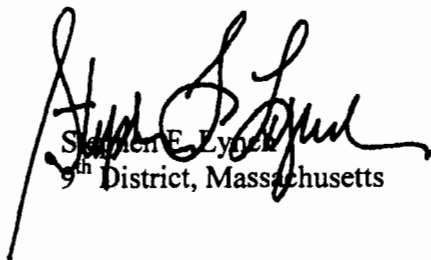
Jim McGovern
3rd District, Massachusetts



Charles B. Rangel
15th District, New York



Bobby L. Rush
1st District, Illinois



Stephen F. Lynch
9th District, Massachusetts



Doris Matsui
5th District, California



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 16 2011

OFFICE OF
AIR AND RADIATION

The Honorable Edward J. Markey
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter of September 19, 2011, co-signed by 59 of your colleagues, to Administrator Lisa Jackson, expressing your support of the recently released Cross-State Air Pollution Rule (CSAPR). I am pleased to respond on the Administrator's behalf.

We appreciate your commitment to this clean air rule and the substantial public health and environmental improvements that will result. The U.S. Environmental Protection Agency (EPA) is working as expeditiously as possible and within the full extent of its authority under the Clean Air Act to ensure improved health for all Americans through reductions in interstate transport of air pollutants across our country.

The benefits of CSAPR are significant, and they far exceed the costs. The standards will improve air quality in thousands of counties throughout the eastern, central, and southern U.S. that account for over 75 percent of the U.S. population. CSAPR will help avoid tens of thousands of premature deaths and illnesses, achieving billions of dollars in public health benefits. Pollution reductions will also lead to improvements in visibility in national and state parks and increased protection for sensitive ecosystems including Adirondack lakes, Appalachian streams, coastal waters, estuaries, and forests.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Diann Frantz in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3668.

Sincerely,

A handwritten signature in black ink, which appears to read "Gina McCarthy", is written over a horizontal line.

Gina McCarthy
Assistant Administrator

AL-10-001-1988

COMMITTEES

ENERGY AND COMMERCE
SUBCOMMITTEE ON
ENERGY AND ENVIRONMENT
CHAIRMAN

SELECT COMMITTEE ON
ENERGY INDEPENDENCE AND
GLOBAL WARMING
CHAIRMAN

NATURAL RESOURCES

EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS

Congress of the United States
House of Representatives
Washington, DC 20515-2107

2108 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2107
(202) 225-2836

DISTRICT OFFICES:

5 HIGH STREET, SUITE 101
MEDFORD, MA 02155
(781) 398-2900

188 CONCORD STREET, SUITE 102
FRAMINGHAM, MA 01702
(508) 875-2900

<http://markey.house.gov>

July 19, 2010

Lisa Jackson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson,

I am writing to bring your attention to a very important issue surrounding the impact that the new Renovation, Repair and Painting (RRP) Rule will have on contractors, consumers and on Hybrivet Systems, Inc., a Massachusetts-based company which manufactures LeadCheck®, a highly accurate and sensitive test kit used to detect lead in building materials. EPA's new regulations may result in the withdrawal of recognition of this test kit for these purposes, even though it is capable of ensuring that lead levels are held to even lower levels than is required. I request that EPA consider continuing to recognize LeadCheck® as an accurate testing system, giving consumers the choice to use a more sensitive lead testing system that protects public health.

As you know, common renovation activities like sanding, cutting, and demolition can create hazardous lead dust and chips by disturbing lead-based paint. This is particularly dangerous for children since lead targets the neurological system and can cause behavioral problems, learning disabilities and other cognitive impairments. In fact, according to a report by the President's Task Force on Environmental Health and Safety Risks to Children, approximately 24 million pre-1978 U.S. dwellings were at risk for lead-based paint hazards.¹ To protect against this risk, on April 22, 2008 EPA issued the Lead, Renovation, Repair and Painting Program (RRP) which requires that all contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination.

Since this rule took effect on April 22, 2010 Hybrivet Systems, Inc.'s LeadCheck® test swabs are the only commercially available test kit recognized by the EPA for both the

¹ <http://cdc.gov/nceh/lead/about/fedstrategy2000.pdf>

training and implementation of the program. Contractors that are now receiving LeadCheck® training have a certification that is valid for 5 years. However, in establishing the program, EPA has implemented a two-phased process and this second phase, which begins on September 1, 2010 may require a shift to test kits that are less sensitive to the presence of lead in paint, wall board and other building materials causing LeadCheck® to no longer be recognized as a valid EPA test kit.

The reason that LeadCheck® may no longer be recognized under the RRP rule is because it is able to measure to levels much lower than the standard promulgated by EPA (600 ppm vs. 5,000 ppm). While the standard of 5,000 ppm is based on the Department of Housing and Urban Development's definition for dangerous lead levels, recent research suggests that this level does not adequately protect public health. In fact, the state of Wisconsin has chosen to promulgate a more protective lead standard of 600 ppm in an attempt to completely eliminate lead-based paint hazards before children are exposed.

The consequence of LeadCheck® losing recognition may undercut the public health and environmental goals of the RRP, cause confusion for consumers and necessitate retraining and recertification for contractors that are currently certified using LeadCheck®. If so desired, consumers should have the option of using a more sensitive test, thus ensuring that children and other sensitive populations are completely protected from lead exposure and poisoning.

I request that EPA continues to recognize LeadCheck® as an accurate and sensitive test that can verify that no lead is present above the level of 600 ppm and that ensures full compliance with federal standards and safe work practices. If a rulemaking is required to ensure recognition of LeadCheck® continues, than I request that in the interim of finalizing the regulation EPA maintains LeadCheck® recognition. I respectfully request that you respond to this letter by July 30, 2010.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward J. Markey". The signature is fluid and cursive, with the first name "Edward" and last name "Markey" clearly distinguishable.

Edward J. Markey



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 19 2010

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

The Honorable Edward J. Markey
U.S. House of Representatives
Washington, DC 20515-2107

Dear Congressman Markey:

Thank you for your letter dated July 19, 2010, to the U.S. Environmental Protection Agency's (EPA's) Administrator, Lisa Jackson, about the Lead Renovation, Repair, and Painting (RRP rule) as it pertains to lead test kits, and specifically the LeadCheck® test kit manufactured by Hybrivet Systems, Inc., a Massachusetts-based corporation.

As you note in your letter, the RRP rule states that before September 1, 2010, lead test kits must meet only a false negative performance criterion, and that recognition of kits that meet only this criterion will last until EPA publicizes the recognition of the first improved test kit that meets the false negative criterion and also a false positive criterion. At this time the Hybrivet product, LeadCheck® test kit is the only EPA recognized kit available to the general public and sold in retail stores. During the initial implementation period for the RRP rule, EPA coordinated successfully with Hybrivet to ensure that a sufficient number of test kits were available in the market so that the regulated community could conduct business without interruption.

The Agency shares your belief that consumers should have options for which type of test kit they can use to comply with the RRP rule requirements and to protect their family from the hazards of lead exposure. The RRP rule directly encouraged all current test kit manufacturers to be evaluated by EPA to determine if their kit could meet only the false negative criterion. EPA established a process, using the Environmental Technology Verification (ETV) program for Phase II evaluation and requested companies to apply. The Agency also provided direct technical advice and material support to companies interested in developing new test kit technology for Phase II.

At this time, EPA's ETV program has completed the laboratory evaluation of four improved Phase II test kits and has analyzed data to determine if any of the kits will meet both the false negative and false positive performance criteria. The Agency recently made public preliminary results of the ETV program on our website, so that test kit developers and users are aware of potential business impacts as soon as possible. Based on the preliminary ETV results, there are no kits that have met both the false negative and the false positive response criteria requirements. Because no new kits meet both the false negative and false positive criteria, EPA will continue to recognize Hybrivet LeadCheck® test kit and the State of Massachusetts lead test kit. The preliminary results indicate one kit that has undergone ETV has met the false

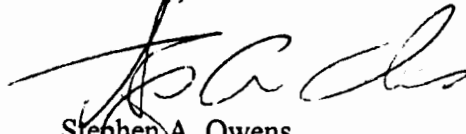
negative response criteria, such that after EPA reviews the final report on the test kits, the Agency anticipates that this test kit will also be recognized as meeting the false negative criterion. A detailed summary of the preliminary test results can be found on EPA's web page at www.epa.gov/lead. The final report on the ETV results is expected in September.

If in the future one or more new kits are found to meet the required Phase II performance criteria, EPA will provide several months advance notice of its intent to recognize the kit(s) to ensure that a smooth transition can occur in training programs and implementation from use of the old kit to use of the new improved kit(s). Should such a situation occur, we will also advise Hybrivet Systems, Inc. directly of the situation so they can assess the impact to their business and can plan accordingly. Hybrivet is also free to conduct its own third party verification of its test kit using ETV or ETV-equivalent procedures and submit the results to EPA for consideration.

Your letter also requested that EPA give consideration to allowing continued use of a recognized Phase I test kit, such as LeadCheck®, for five years to coincide with the renovator certification recognition period. That approach would require additional rulemaking to modify the requirements, and the Agency is not at this time contemplating additional rulemaking on this issue. However, because no new kits meet both the false negative and false positive criteria, the essence of your request has been met, and EPA will continue to recognize the LeadCheck® test kit for use under the RRP rule until such time that one or more kits are found to meet the Phase II response criteria.

Again, thank you for your letter and I hope the information provided is helpful to you. If you have any additional questions or concerns, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Owens", written over a horizontal line.

Stephen A. Owens
Assistant Administrator

AL-10-000-8954

**THE WHITE HOUSE OFFICE
REFERRAL**

April 12, 2010

TO: ENVIRONMENTAL PROTECTION AGENCY

ACTION COMMENTS:

ACTION REQUESTED: INFO AND FILE COPY ONLY/NO ACTION NECESSARY

REFERRAL COMMENTS:

DESCRIPTION OF INCOMING:

ID: 1029598

MEDIA: EMAIL

DOCUMENT DATE: April 01, 2010

TO: PRESIDENT OBAMA

FROM: THE HONORABLE EDWARD MARKEY
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

SUBJECT: ENCOURAGES THE PRESIDENT TO QUICKLY EMBARK ON THE
DEVELOPMENT OF A NEW SET OF FEDERAL LIGHT DUTY VEHICLE
STANDARDS FOR MODEL YEARS 2017

COMMENTS:

PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9 WORKING DAYS OF RECEIPT,
UNLESS OTHERWISE STATED, PLEASE TELEPHONE THE UNDERSIGNED AT (202) 456-2590.

RETURN ORIGINAL CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT) TO: DOCUMENT TRACKING UNIT,
ROOM 85, OFFICE OF RECORDS MANAGEMENT - THE WHITE HOUSE, 20500
FAX A COPY OF REPOSE TO: (202) 456-5881

**THE WHITE HOUSE
DOCUMENT MANAGEMENT AND
TRACKING WORKSHEET**



DATE RECEIVED: April 09, 2010

CASE ID: 1029598

NAME OF CORRESPONDENT: THE HONORABLE EDWARD MARKEY

SUBJECT: ENCOURAGES THE PRESIDENT TO QUICKLY EMBARK ON THE DEVELOPMENT OF A NEW SET OF FEDERAL LIGHT DUTY VEHICLE STANDARDS FOR MODEL YEARS 2017

ROUTE TO: AGENCY/OFFICE	(STAFF NAME)	ACTION		DISPOSITION	
		CODE	DATE	TYPE RESPONSE	CODE COMPLETED
LEGISLATIVE AFFAIRS	PHIL SCHILIRO	ORG	04/12/2010		C 04/12/2010
ACTION COMMENTS:					
✓ ENVIRONMENTAL PROTECTION AGENCY			04/12/2010		C 04/12/2010
ACTION COMMENTS:					
ACTION COMMENTS:					
ACTION COMMENTS:					
ACTION COMMENTS:					
ACTION COMMENTS:					

COMMENTS: ENCLOSURES

MEDIA TYPE: EMAIL

USER CODE:

ACTION CODES	TYPE RESPONSE	DISPOSITION	COMPLETED DATE
A = APPROPRIATE ACTION	INITIALS OF SIGNER (W.H. STAFF)	A = ANSWERED OR ACKNOWLEDGED	DATE OF ACKNOWLEDGEMENT OR CLOSEOUT DATE (MM/DD/YY)
B = RESEARCH AND REPORT BACK	NRN = NO RESPONSE NEEDED	C = CLOSED	
D = DRAFT RESPONSE	OTBE = OVERTAKEN BY EVENTS	X = INTERIM REPLY	
I = INFO COPY/NO ACT NECESSARY			
R = DIRECT REPLY W/ COPY			
ORG = ORIGINATING OFFICE			

KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES
REFER QUESTIONS TO DOCUMENT TRACKING UNIT (202) 456-2590
SEND ROUTING UPDATES AND COMPLETED RECORDS TO OFFICE OF RECORDS MANAGEMENT - DOCUMENT TRACKING UNIT
ROOM 85, EEOB.

1029598

HENRY A. WAXMAN, CALIFORNIA
DIA RMAN

JOHN D. DINGELL, MICHIGAN
CHARANANEMERITUS
EDWARD J. MARKEY, MASSACHUSETTS
WILL BOLLER, VIRGINIA
FRANK PALLONE, NEW JERSEY
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
ANNA G. ESHOO, CALIFORNIA
BART STUPAK, MICHIGAN
ELIOT L. ENGEL, NEW YORK
GUY F. GREEN, TEXAS
DIANA DIGGETT, COLORADO
VICKI CHAIRMAN
JOE CARRS, CALIFORNIA
MIKE DOYLE, PENNSYLVANIA
JANE HANMAN, CALIFORNIA
JAN SCHAKOWSKY, ILLINOIS
CHARLES A. GONZALEZ, TEXAS
JAY INSLEY, WASHINGTON
TAMMY BALDWIN, WISCONSIN
MIKE KOSS, ARIZONA
ANTHONY D. WEINER, NEW YORK
J. M. MATHESON, UTAH
D. K. RUTHERFORD, NORTH CAROLINA
CHARLES E. WELLS, LOUISIANA
JOHN BARRON, GEORGIA
BARON R. HILL, NEVADA
EDWARD J. MARTEL, CALIFORNIA
DONNA CHRISTENSEN, VIRGINIA ISLANDS
KATHY CASTOR, FLORIDA
JOHN BARBARO, MARYLAND
CHRISTOPHER MURPHY, CONNECTICUT
ZACHARY T. SPACE, OHIO
JERRY MENDERSHALL, CALIFORNIA
BETH SUTTON, OHIO
WILL E. BRADLEY, IOWA
PETER WILSON, VERMONT

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

MAJORITY (202) 225-2927
FACSIMILE (202) 225-2305
MINORITY (202) 225-3841

energycommerce.house.gov

April 1, 2010

JOE BARTON, TEXAS
RANKING MEMBER

ROY BLUNT, MISSOURI
DEPUTY RANKING MEMBER
RALPH M. HALL, TEXAS
FRED LUTON, MICHIGAN
CLIFF STEARNS, FLORIDA
NATHAN DEAL, GEORGIA
ED WHITFIELD, KENTUCKY
JOHN SHIMMEL, ILLINOIS
JOHN B. SHADDEG, ARIZONA
STEVE BUYER, INDIANA
GEORGE RADANOVICH, CALIFORNIA
JOSEPH R. PITTS, PENNSYLVANIA
MARY BONO MACO, CALIFORNIA
GREG WALDEN, OREGON
LEE TERRY, NEBRASKA
MIKE RODGERS, MICHIGAN
SUE WILKINS MYRICK, NORTH CAROLINA
JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA
MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE
PHIL GINGREY, GEORGIA
STEVE CAULSTE, LOUISIANA

The Honorable Barack H. Obama
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C.

Dear Mr. President:

I write to congratulate you on the upcoming finalization of the federal regulations to implement the light duty vehicle fuel economy and tailpipe emissions standards you announced almost a year ago. This landmark energy independence and global warming agreement, the authority for which is based in both the Energy Independence and Security and Clean Air Acts, was embraced by all stakeholders - from the automobile industry to the Sierra Club - and is a prime example of the manner in which Americans expect their government to work.

By requiring unprecedented levels of collaboration between the Environmental Protection Agency (EPA), the Department of Transportation, the State of California, and other non-governmental stakeholders, your Administration showed true leadership. These regulations will lead to a fleet-wide fuel economy standard of 35.5 miles per gallon by 2016, a savings of 1.8 billion barrels of oil over the life of the program, and a reduction of about 900 million metric tons of greenhouse gas emissions. While consumers save money at the pump for gasoline they will no longer need to buy, automakers will also enjoy regulatory certainty, which will help them design and build the advanced technology vehicles of the future.

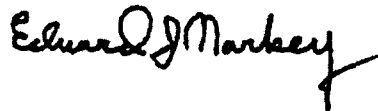
I encourage you to build upon this excellent beginning, and quickly embark on the development of a new set of federal standards for model years 2017 and beyond. I am not alone; A recent report by the U.S. Government Accountability Office (GAO) entitled "NHTSA and EPA's Partnership for Setting Fuel Economy and Greenhouse Gas Emissions Standards Improved Analysis and Should Be Maintained" found that the collaboration between the National Highway Traffic Safety Administration (NHTSA)

and EPA led to the development of more robust, transparent and lower-cost regulations. In fact, this report concluded that "if NHTSA and EPA do not collaborate closely on future standards, there is a risk that the standards may not be harmonized, which would lead to increased compliance costs for manufacturers." In addition, this report contained several notable and specific recommendations:

- NHTSA and EPA should enter into a Memorandum of Understanding with one another in order to formalize their standard-setting process and respective responsibilities.
- NHTSA and EPA should document and publish the process used in this joint rulemaking to establish a roadmap for any future rulemaking efforts in order to increase transparency.
- NHTSA should conduct and document a retrospective analysis of the model year 2008 through 2011 light truck standards in order to validate the accuracy of its key assumptions related to the costs and benefits associated with proposed standards, and should consider involving EPA in this process.

I believe that the implementation of these recommendations would help to build upon the strong foundation laid by EPA and NHTSA in their development of the 2012-16 standards. I therefore encourage you to continue the tremendous progress your Administration has already made in the area of reducing both our greenhouse gas emissions and our dependence on imported oil from the transportation sector by committing the resources of both EPA and NHTSA to developing harmonized federal light duty vehicle standards for model years 2017 and beyond.

Sincerely,

A handwritten signature in black ink, reading "Edward J. Markey". The signature is fluid and cursive, with a long horizontal stroke at the end.

Edward J. Markey
Chairman, Subcommittee on Energy and
Environment
Committee on Energy and Commerce

GAO

Report to the Chairman, Subcommittee on
Energy and Environment, Committee on
Energy and Commerce, House of
Representatives

February 2010

VEHICLE FUEL ECONOMY

NHTSA and EPA's
Partnership for Setting
Fuel Economy and
Greenhouse Gas
Emissions Standards
Improved Analysis and
Should Be Maintained





Highlights of GAO-10-336, a report to the Chairman, Subcommittee on Energy and the Environment, Committee on Energy and Commerce, House of Representatives

Why GAO Did This Study

In May 2009, the U.S. administration announced plans to increase the Department of Transportation's (DOT) National Highway Traffic Safety Administration's (NHTSA) corporate average fuel economy (CAFE) standards and establish the Environmental Protection Agency's (EPA) greenhouse gas (GHG) emissions standards for vehicles. NHTSA redesigned CAFE standards for light trucks for model years 2008 through 2011, and some experts raised questions about the rigor of the computer modeling NHTSA used to develop these standards.

GAO was asked to review (1) the design of NHTSA and EPA's proposed standards; (2) how they are collaborating to set these standards; (3) improvements compared to a previous rulemaking, if any, NHTSA made to the modeling; and (4) the extent to which NHTSA analyzed the effects of past light truck standards and the accuracy of data used to set them.

GAO reviewed relevant rulemaking and modeling documents, and interviewed agency officials and other experts.

What GAO Recommends

GAO is recommending NHTSA and EPA document their collaborative process, formalize this relationship for the future, and conduct additional research and analyses of past light truck standards.

EPA agreed and DOT generally agreed with our recommendations.

View GAO-10-336 or key components. For more information, contact Susan Fleming at (202) 512-2834 or flemings@gao.gov.

VEHICLE FUEL ECONOMY

NHTSA and EPA's Partnership for Setting Fuel Economy and Greenhouse Gas Emissions Standards Improved Analysis and Should Be Maintained

What GAO Found

NHTSA and EPA have worked to propose CAFE and GHG standards that are generally aligned so manufacturers can build a single fleet of vehicles to comply with both. The standards are based on vehicle size and will cover model years 2012 to 2016. However, differences between the standards still exist because of variation in the legal authorities of each agency. For example, certain flexibility mechanisms designed to reduce compliance costs for manufacturers apply only to GHG standards, which could make aligning them with CAFE standards more difficult. However, potentially stricter penalties for GHG standard noncompliance could improve compliance with CAFE standards. Also, while NHTSA and EPA expect benefits from adopting a standard based on vehicle size, neither standard has a mechanism to ensure that a specific national target will be met.

NHTSA and EPA are collaborating by sharing resources and expertise to jointly set CAFE and GHG standards. From fiscal years 1996 through 2001, NHTSA was barred from using appropriated funds to raise CAFE standards. In contrast, EPA has continually expanded its automotive engineering expertise, including at its vehicle testing lab. As a result, EPA was able to contribute several original research studies to the proposed joint standards. Because this collaboration is not formally required and the agencies are not documenting the processes used—a recognized best practice—they may not be able to replicate them in the future.

To set the proposed standards, NHTSA improved upon the computer model compared to the version used that had been used to set the CAFE standards for 2008 through 2011 light trucks. One improvement was that NHTSA increased the model's transparency by using publicly available, rather than confidential, data to develop a baseline fleet of vehicles. With EPA's input, NHTSA updated several data inputs such as technology costs and the cost of emissions. While experts GAO interviewed had varying critiques of NHTSA's model, there was no consensus on how NHTSA could further improve it. In particular, experts' opinions differed sharply on two studies, which reported opposing findings concerning the relationship between vehicle weight (a key factor in determining fuel consumption) and safety—suggesting that additional research may be warranted.

In part due to resource and data constraints, NHTSA has not yet evaluated its 2008 through 2011 light truck CAFE standards, which have a similar design to the new standards. Retrospective analyses of efforts and data inputs could inform NHTSA on the extent to which the standards met goals and provide means to improve the process of setting standards. Lacking such analysis, NHTSA does not know whether goals of the standards have been met or if changes are needed to the program. NHTSA officials said that while they would like to conduct such analyses, limited resources and time have prevented them from doing so, and they have no definitive plans to conduct them in the future.

Contents

Letter		1
	Background	3
	Although NHTSA and EPA Worked to Propose CAFE and GHG Emissions Standards That Are Aligned, the Programs Have Several Key Differences	11
	Although the Agencies Closely Collaborated and Capitalized on EPA's Recent Research in Setting Standards, Joint Rulemaking for Future Standards Is Not Guaranteed	19
	NHTSA Improved the Analysis It Uses to Help Set CAFE Standards, and although Experts Still Expressed Some Concerns, They Lacked Consensus on Additional Improvements	26
	Largely Due to Resource Constraints, NHTSA Has Limited Plans to Assess the Model Year 2008 through 2011 Light Truck CAFE Standards or Key Data Used to Develop the Standards	38
	Conclusions	41
	Recommendations for Executive Action	43
	Agency Comments and Our Evaluation	43
Appendix I	Objectives, Scope, and Methodology	46
Appendix II	The CAFE Compliance and Effects Modeling System	49
Appendix III	Comments from the Environmental Protection Agency	56
Appendix IV	GAO Contact and Staff Acknowledgments	59
Table		
	Table 1: Federal Agency Roles in CAFE	4
Figures		
	Figure 1: Timeline of Major CAFE and GHG Emissions Standards Milestones	8

Figure 2: Historical Changes to CAFE Standards and Proposed Future Targets	9
Figure 3: Proposed CAFE Footprint Curves for Passenger Cars and Light Trucks, Model Years 2012 through 2016 and Existing 2011 Curve	13
Figure 4: Potential Scenarios for Meeting CAFE Targets, Based on Varying Vehicle Sales	15
Figure 5: Example of Incremental Cost and Effectiveness Estimates for Technology Applications	32
Figure 6: The Volpe Model	49
Figure 7: The Volpe Model's Determination of Technology Applicability and Availability	53

Abbreviations

CAA	Clean Air Act
CAFE	corporate average fuel economy
CO ₂	carbon dioxide
DOE	Department of Energy
DOT	U.S. Department of Transportation
EIA	Energy Information Administration
EISA	Energy Independence and Security Act of 2007
EPA	Environmental Protection Agency
EPGA	Energy Policy and Conservation Act
GHG	greenhouse gas
g/mi	grams per mile
mpg	miles per gallon
NAS	National Academy of Sciences
OMB	Office of Management and Budget
OMEGA	Optimization Model for Reducing Emissions of Greenhouse Gases from Automobiles

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



United States Government Accountability Office
Washington, DC 20548

February 25, 2010

The Honorable Edward J. Markey
Chairman
Subcommittee on Energy and Environment
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

In May 2009, the U.S. administration announced the National Fuel Efficiency Policy relating to cars and light trucks, which beginning in 2012, would not only increase corporate average fuel economy (CAFE) standards but also establish for the first time greenhouse gas (GHG) emissions standards. According to the administration, this effort will help to accomplish several goals. First, by helping to reduce oil consumption, CAFE standards could decrease the level of oil imports, in turn decreasing both the nation's economic vulnerability to oil price shocks and the trade deficit. Second, the administration intends for CAFE standards and GHG emissions standards to begin addressing global climate change by reducing emissions of GHGs such as carbon dioxide from the sector of the economy that has long been the fastest-growing source of these emissions—mobile sources like cars and trucks. Finally, this program represents a coordinated national approach to reducing GHG emissions and improving fuel economy, allowing auto makers to build a fleet of vehicles to meet one national standard rather than multiple standards set by federal and state governments.

Although the proposed standards offer potential benefits, they also impose costs. Given the nation's current economic challenges, it is imperative that in the course of setting new standards, agencies estimate as accurately as possible the benefits and costs the standards will impose on industry and consumers—as the standards are in part based on estimates of these costs and benefits. For example, if costs to consumers from increased standards are underestimated, then the standards might be too stringent, leading to high costs imposed on consumers without adequate benefits. The stringency of these standards—a key factor in generating costs to the industry and consumers—depends in part on analysis conducted by the National Highway Traffic Safety Administration (NHTSA), the agency responsible for regulating CAFE standards, and the Environmental Protection Agency (EPA), the agency responsible for regulating GHG emissions standards. Experts raised questions in 2006 when NHTSA set

new CAFE standards for model year 2008 through 2011 light trucks. Specifically, experts expressed concerns about some of the data in the model NHTSA used to estimate the potential impact of increasing these standards. In response, NHTSA made changes to the model in preparation for establishing new standards for model years 2012 through 2016.

You asked us to review NHTSA and EPA's joint effort to set CAFE and GHG emissions standards. Specifically, we reviewed (1) the design of the proposed CAFE and GHG emissions standards, including similarities and differences between the two; (2) how NHTSA and EPA are collaborating in setting CAFE and GHG emissions standards and how the resources of both agencies are being used; (3) improvements compared to previous rulemakings, if any, made to NHTSA's process for setting standards—in particular, its regulatory impact analysis (the "Volpe model")—and for obtaining and validating data used in this model; and (4) the extent to which NHTSA analyzed the effects of its light truck standards for model years 2008 through 2011, as well as the accuracy of key data it used to establish these standards. To describe the design of the proposed CAFE and GHG emissions standards, we analyzed (1) rulemaking documents with information on the structure of the standards and how NHTSA and EPA aligned them and (2) legislation governing CAFE and GHG standards, as well as associated penalties for noncompliance. To describe how NHTSA and EPA are collaborating to set CAFE and GHG emissions standards, we reviewed and analyzed relevant rulemaking documents and legislation and interviewed NHTSA and EPA officials on their communication and coordination, analyzing this information against GAO criteria for evaluating communication and coordination among federal agencies. To identify improvements made to the Volpe model, we evaluated (1) documentation about the model against GAO criteria for developing cost estimates and assessing data reliability and (2) federal guidance for conducting regulatory and economic analyses. We interviewed experts and stakeholders with relevant expertise in areas such as economic modeling and automotive technology costs about data inputs and the design of the model. We also interviewed automobile industry stakeholders—including domestic and international automobile manufacturers and an association representing original equipment suppliers. Finally, to determine the steps NHTSA has taken to analyze the effects of the model year 2008 through 2011 light truck standards, we reviewed documentation related to these standards and interviewed NHTSA officials to determine whether NHTSA took steps to assess the outcomes of these standards or the accuracy of data it used to set these standards.

We conducted this performance audit from June 2009 through February 2010, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. (For more information on our scope and methodology, see app. I.)

Background

The Energy Policy and Conservation Act (EPCA)¹, enacted in 1975, established CAFE standards with the goal of reducing oil consumption. EPCA required manufacturers to meet a single fleetwide CAFE standard for all cars and either a single standard or class standards for light trucks. The act provided the U.S. Department of Transportation (DOT) with the authority to administer the CAFE program, and DOT delegated that authority to NHTSA. In addition, other federal agencies have played a role in the CAFE program (see table 1). For example, under EPCA, EPA is responsible for the development of CAFE testing and calculation procedures.² When it was enacted, EPCA specified that the standard for passenger cars would be 18 miles per gallon (mpg) in 1978, rising to 27.5 mpg by 1985, but it permitted NHTSA to determine the standard for light trucks through rulemakings. As required in EPCA, NHTSA began setting CAFE standards for light trucks at the "maximum feasible level" and made incremental increases to these standards from 1979 through 1996. During that time, the light truck CAFE standard increased from 17.9 mpg to 20.7 mpg. However, from fiscal years 1996 through 2001, NHTSA was barred from using appropriated funds made available in DOT's appropriation to raise CAFE standards.³ The CAFE standard for cars remained at the 1985 setting of 27.5 mpg through model year 2010. The first increase in CAFE standards for cars since 1985 will take place for model year 2011 cars.

¹Pub. L. No. 94-163, 89 Stat. 871 (Dec. 22, 1975).

²EPCA requires EPA to measure fuel economy using procedures prescribed by EPA. Manufacturers are required to provide EPA with all data needed to determine their CAFE level for each model year. For the 2001 model year and later, EPA must generate a summary report of fuel economy values contained in the CAFE calculation. NHTSA uses the end-of-year report from EPA, along with any credits earned in the past or borrowed from the future, to determine if a manufacturer's fleet is in compliance for that model year, and if not, NHTSA is responsible for notifying the manufacturer of any required fine.

³See e.g. Pub. L. No. 104-50, §330, 109 Stat. 436, 457 (Nov. 15, 1995).

Table 1: Federal Agency Roles in CAFE

Agency	Role
NHTSA	<ul style="list-style-type: none">• Set and enforce CAFE standards
EPA	<ul style="list-style-type: none">• Consultant to NHTSA in setting CAFE standards• Conduct vehicle testing to determine manufacturer fuel-economy levels, which are provided to NHTSA and individual manufacturers• Function as lead in setting GHG emissions standards and joint partner with NHTSA in rulemaking for proposed CAFE and GHG standards
DOE	<ul style="list-style-type: none">• Consultant to NHTSA in setting CAFE standards

Source: GAO analysis.

After years of little CAFE-related activity or movement in the two standards, several changes took place. According to NHTSA officials, DOT requested that the appropriations ban be lifted so that they could raise CAFE standards. The ban was lifted beginning in fiscal year 2002, and in 2003, NHTSA promulgated increased CAFE standards for light trucks for model years 2005 to 2007. In 2006, NHTSA issued another rule to increase and reform the standards for light trucks, which we refer to as the model year 2008 through 2011 light truck standards. In this light truck rulemaking, NHTSA transitioned from a single CAFE standard applicable to each manufacturer's fleet to a reformed, attribute-based standard based on a vehicle's "footprint," or the size of its wheelbase multiplied by its average track width. The move from a single standard for all light trucks to attribute-based standards for each light truck vehicle model based on a vehicle's footprint was designed to address a number of downsides to "unreformed"⁴ CAFE standards, including potential safety implications and consumer choice limitations. The Energy Independence and Security Act of 2007 (EISA)⁵ amended EPCA to require not only light truck but also passenger car standards to be based on an attribute-based curve and for the fuel economy of the entire industrywide fleet—including cars and light trucks—to reach an average of 35 mpg by model year 2020. Subsequent to the enactment of EISA, in 2008, NHTSA proposed CAFE standards based on vehicle footprints for passenger cars and light trucks for model years 2011 through 2015.⁶ However, a final rule was issued only for model year

⁴Unreformed refers to the single CAFE standard that existed prior to the adoption of attribute-based standards.

⁵Pub. L. No. 110-140, 121 Stat 1492 (Dec. 19, 2007).

⁶DOT, *Average Fuel Economy Standards Passenger Cars Light Trucks Model Years 2011-2015*, 73 Fed. Reg. 24352 (May 2, 2008).

2011 standards in March 2009⁷—a rulemaking effort and CAFE standard that we refer to as the model year 2011 CAFE standard. The goal of this final rule was to reach an estimated fleet average—or target—of 30.2 mpg for cars and 24.1 mpg for light trucks in model year 2011.

In recent years, public concerns have grown about the relationship between the emission of GHGs and global climate change. According to the Intergovernmental Panel on Climate Change—a United Nations organization—global atmospheric concentrations of GHGs have increased as a result of human activities, contributing to a warming of the earth's climate. If unchecked, this could have serious negative effects, such as rising sea levels and coastal flooding worldwide.

Automobiles represent a significant share of GHG emissions. According to EPA, in 2007, personal vehicle use accounted for 17 percent of total GHG emissions in the U.S. In 2007, the United States Supreme Court ruled that EPA has the statutory authority to regulate GHG emissions from new motor vehicles under the Clean Air Act (CAA) because greenhouse gases meet the CAA's definition of an air pollutant. Furthermore, the Supreme Court held that EPA must regulate GHGs as such if EPA finds them to be an endangerment to public health or welfare.⁸ Subsequent to this decision, EPA issued a final Endangerment Finding of GHG emissions⁹ in December 2009, laying the foundation for setting GHG emissions standards for vehicles.¹⁰

⁷The previous administration did not publish a final rule for all five model years. For the final rule for model year 2011 see 74 Fed. Reg. 14196 (March 30, 2009).

⁸*Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007).

⁹Section 202 of the CAA requires EPA to regulate the emission of air pollutants from mobile sources which cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. The Endangerment Finding represents the EPA Administrator's conclusion that four greenhouse gases meet the threshold requirement for regulation under Section 202: carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons. Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66496 (Dec. 15, 2009).

¹⁰A joint resolution of disapproval under the Congressional Review Act has been introduced in the Senate. S.J. Res. 26, 111th Cong. (2010). If enacted, this resolution would void EPA's finding that GHGs endanger public health and welfare and cause or contribute to air pollution. Similarly, several bills have been introduced which would exclude GHGs from being defined as "air pollutants" subject to regulation under section 202 of the Clean Air Act. See H.R. 4396, 111th Cong. (2010); H.R. 4752, 111th Cong. (2010). In addition, numerous lawsuits have been filed challenging the endangerment finding.

In addition, in 2005, citing compelling and extraordinary impacts of climate change on the state, California filed a request with EPA for a waiver of CAA preemption¹¹ to set GHG emissions standards for new motor vehicles starting in the 2009 model year. The CAA directs EPA to grant a waiver unless EPA finds (1) the state's protectiveness determination was arbitrary and capricious, (2) the state's standards are not needed to meet "compelling and extraordinary conditions," or (3) the state's standards are inconsistent with section 202(a) of the CAA (provisions related to technical feasibility and lead time to manufacturers). Under certain conditions set forth in the CAA, other states may adopt California's motor vehicle emissions standards. The automobile industry brought litigation in several states, including California, alleging, among other claims, that the state standards were preempted by EPCA (which preempts state standards relating to fuel economy). Federal district courts in Vermont and California ruled against such claims, in the only two cases to be judged on their merits to date.¹² California's waiver request was initially denied by the prior administration. EPA determined that California's standards were not needed to meet compelling and extraordinary conditions, as required by the CAA, because global climate change and local or regional factors represent different causal links affecting air pollution in California—and previous waivers have addressed only the local or regional air pollution problems. In addition, EPA found that the effects of climate change in California are not compelling and extraordinary when compared to the rest of the country.¹³ GAO found in January 2009¹⁴ that the "compelling and extraordinary" test had never

¹¹The CAA generally allows one set of federal standards for new motor vehicle emissions and preempts states from adopting or enforcing their own standards. However, it also requires the EPA Administrator to waive this preemption provision for any state that adopted certain emission standards for new motor vehicles prior to March 1966 if the state makes a finding that its standards are as protective, in the aggregate, as applicable federal standards. California is the only state which has met the requirement for obtaining a waiver.

¹²*Cent. Valley Chrysler-Jeep, Inc. v. Goldstene*, 529 F. Supp. 2d 1151 (E.D. Cal. 2007); *Green Mt. Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 2d 295 (D. Vt. 2007). In both cases, the courts held that that federal preemption did not apply to preclude the state regulations.

¹³California State Motor Vehicle Pollution Control Standards; Notice of Decision Denying a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles, 73 Fed Reg. 12156, 12157 (March 6, 2008).

¹⁴GAO, *Clean Air Act: Historical Information on EPA's Process for Reviewing California Waiver Requests and Making Waiver Determinations*, GAO-09-249R (Washington, D.C.: Jan. 16, 2009).

before been used to completely deny a waiver request. The current administration also found that the denial was a historical anomaly, reconsidered the request, and granted the waiver in June 2009 after finding that it should not have been denied under any of the statutory factors.¹⁵ Petition for review of this decision filed by the U.S. Chamber of Commerce and the National Automobile Dealers Association is now pending in front of the U.S. Court of Appeals for the District of Columbia Circuit.¹⁶

In response to the EISA's call for higher CAFE standards and California and other states' desire to establish fuel economy or GHG emissions standards, the current administration announced its National Fuel Efficiency Policy in May 2009. This policy involves setting higher CAFE standards for model years 2012 through 2016 for cars and light trucks, as well as new GHG emissions standards by EPA during this same period. As a result, NHTSA and EPA are conducting a joint rulemaking to increase CAFE standards and set new GHG emissions standards.¹⁷ (See fig. 1 for a timeline of major CAFE and GHG emissions standards milestones.)

¹⁵California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles, 74 Fed Reg. 32744, 32767, 32783 (July 8, 2009).

¹⁶Petition for Review, *Chamber of Commerce of the U.S. v. EPA*, No. 09-01237, D.C. Cir. (filed Sept. 8, 2009).

¹⁷For the remainder of this report, we refer to this joint rulemaking and related proposed standards as the proposed model year 2012 to 2016 rule.

Figure 1: Timeline of Major CAFE and GHG Emissions Standards Milestones

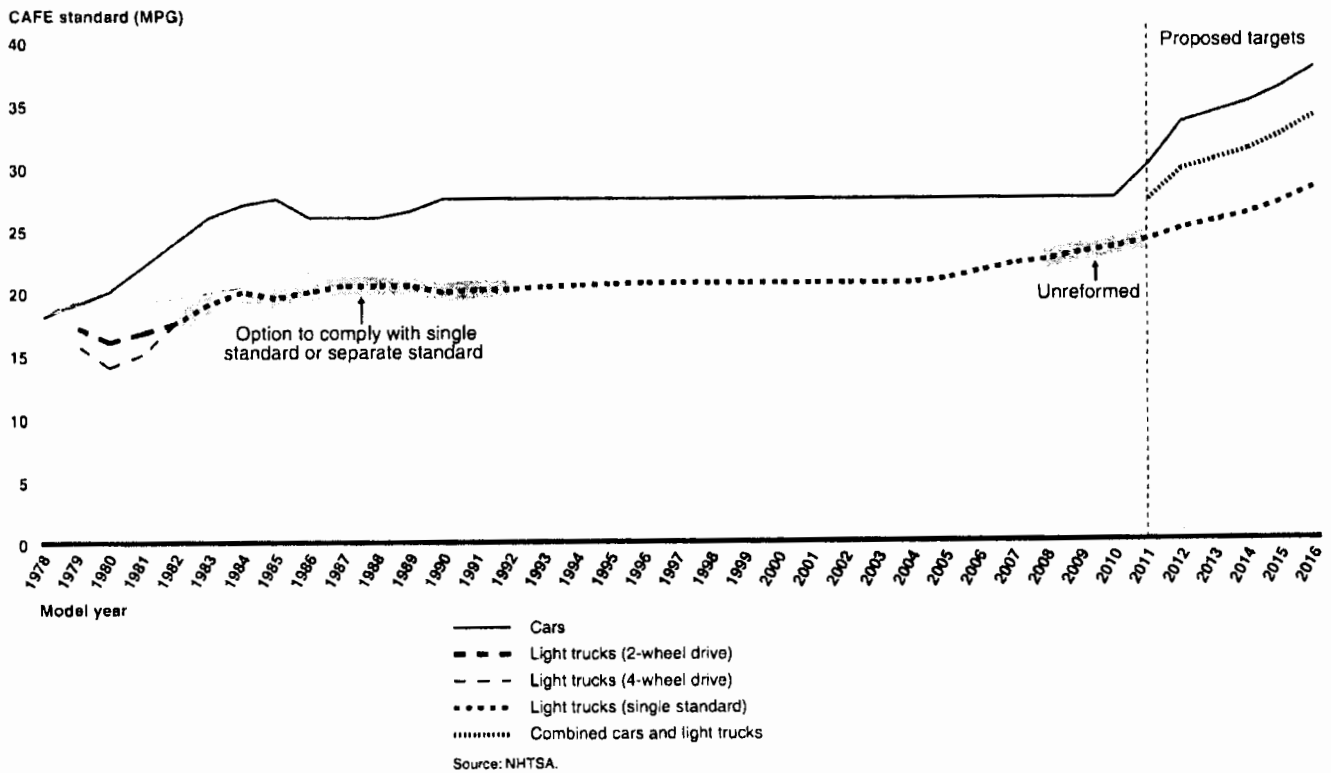
1978	The corporate average fuel economy (CAFE) standards for newly manufactured passenger cars—established in 1975 by the Energy Policy and Conservation Act (EPCA)—take effect. The standards were initially set at 18 mpg.
1979	The first set of light truck CAFE standards, which EPCA directed NHTSA to establish administratively, take effect. The light truck standards vary initially depending on type of vehicle (2-wheel vs. 4-wheel drive) and increase incrementally each year until 1996.
1985	The final incremental increase in car CAFE standards under EPCA takes effect, and newly manufactured cars were required to average 27.5 mpg.
1986	In response to petitions from automakers who noted that consumers were demanding larger cars and engines, largely due to a decline in gasoline prices, NHTSA reduces the CAFE standard for passenger cars to 26.0 mpg.
1990	NHTSA returns CAFE standards for passenger cars to 27.5 mpg.
1992	NHTSA replaces the separate standards for 2-wheel vs. 4-wheel drive light trucks with a single standard of 20.2 mpg.
1996	NHTSA's appropriation prohibits it from conducting any work on CAFE, which freezes the standard for light trucks at 20.7 mpg.
2001	Congress lifts its prohibition on NHTSA conducting work related to CAFE.
2003	NHTSA issues a rule for light truck CAFE standards for model years 2005 to 2007.
2004	The California Air Resources Board (CARB) adopts the nation's first GHG rule, which requires automakers to begin selling vehicles in California with incrementally decreasing GHG emission levels between 2009 and 2016.
2005	CARB submits a request for a waiver of Clean Air Act (CAA) preemption for its GHG emission standards for motor vehicles to take effect in 2009.
2006	NHTSA issued final rule reforming light truck standards for model years 2008 to 2011 and requested Congress to provide authority to reform passenger car standards.
2007 (April)	The U.S. Supreme Court rules that greenhouse gases (GHG) meet the CAA definition of an air pollutant and that EPA has the statutory authority to regulate these emissions from new motor vehicles under the act.
2007 (December)	Congress enacts the Energy Independence and Security Act (EISA), which reforms car standards and calls for CAFE standards to reach an industrywide fleet average (i.e., all manufactured vehicles) of 35 mpg by 2020.
2008	NHTSA's reformed light truck standards, which are designed around the "footprint" (or wheelbase multiplied by track width) of a vehicle rather than as a single standard, take effect.
2009 (March)	NHTSA finalizes CAFE standards for cars and light trucks, to be implemented in 2011, increasing car standards for the first time in about 20 years.
2009 (May)	The current administration announces plans for new CAFE standards, beginning in 2012 and increasing to a fleet average of 35.5 miles per gallon by 2016. The new CAFE standards are to be harmonized with the new vehicle GHG emissions standards to be set by EPA and are based on vehicle footprint for both passenger cars for the first time, as well as light trucks.
2009 (July)	After initially being denied, California is granted a waiver of CAA preemption by EPA, giving the state authority to set GHG emission standards for vehicles in the future. California elects to adopt the national standard being developed by EPA, but also begins looking ahead to standards in 2017.

Source: GAO.

The proposed joint rule would increase CAFE standards to achieve an estimated fleetwide average of 34.1 mpg and implement GHG emissions standards to achieve an estimated fleetwide average of 250 grams per mile (g/mi) of carbon dioxide (CO₂) by model year 2016. The agencies jointly issued a Notice of Upcoming Joint Rulemaking in May 2009, issued a Proposed Rulemaking and held three public hearings across the country in September 2009, held a 60-day public comment period that ended in

November 2009, and plan to issue the final rules by April 1, 2010.¹⁸ (Fig. 2 shows the changes to CAFE standards over time, including the proposed standards).

Figure 2: Historical Changes to CAFE Standards and Proposed Future Targets



¹⁸As required by EPCA, NHTSA must issue CAFE standards at least 18 months before they are implemented.

In the proposed rule, NHTSA and EPA estimate that the proposed standards will result in both benefits and costs:¹⁹

- *Potential benefits for consumers and society.* The agencies estimate that the new standards will result in approximately 1.8 billion barrels of oil savings and 950 million metric tons of carbon dioxide emissions reductions over the lifetime of vehicles sold in model years 2012 through 2016. In addition, the agencies estimate that new and more fuel-efficient vehicles will save consumers more than \$4,000 in gasoline costs over a model year 2016 vehicle's lifetime.
- *Potential costs for consumers, automobile manufacturers, and others.* The agencies estimate that the proposed standards would require manufacturers to incorporate additional fuel-saving technology into vehicles, which would increase the average cost of a model year 2016 vehicle by around \$1,100. As a result, this will increase the purchase price of vehicles for consumers, or manufacturers will receive lower profits from vehicle sales, or both. However, the agencies estimate that the total benefits of the proposed standards will outweigh the costs, providing net benefits to society of nearly \$200 billion over the lifetimes of the model year 2012 to 2016 vehicles. In addition, the estimated lifetime fuel savings exceeds the \$1,100 increase in vehicle cost for a model year 2016 vehicle, yielding a net savings of about \$3,000 for consumers.

¹⁹The benefits and costs are estimated based on assumptions NHTSA and EPA made in the analyses, and may change if these assumptions (e.g., fuel price) change. See Appendix II for a discussion of NHTSA's analysis.

Although NHTSA and EPA Worked to Propose CAFE and GHG Emissions Standards That Are Aligned, the Programs Have Several Key Differences

Although the Proposed Standards Based on Vehicle Footprint Should Result in Benefits, Actual Vehicle Sales May Affect the Level of Benefits Realized

Although the proposed CAFE and GHG emissions standards are distinct and automobile manufacturers will be subject to both sets, EPA and NHTSA have worked to develop standards that are aligned (what the agencies refer to as "harmonized") with the intention that manufacturers can build one fleet of vehicles to comply with both sets of standards. This should lower the cost of compliance for manufacturers compared to a case in which the standards were set separately and without regard for the other's design. This harmonization is possible because fuel economy and GHG emissions have a clear and direct relationship—specifically, vehicle tailpipe carbon dioxide emissions are directly related to the quantity of fuel burned.²⁰ Given the relationship between GHG emissions and fuel economy, actions to increase fuel economy also necessarily reduce GHG emissions; therefore, manufacturers can use the same technologies to help meet both standards.

NHTSA and EPA have proposed standards for both passenger cars and light trucks that are based on vehicle footprint so that each vehicle is subject to a target level based on its footprint, with smaller vehicles having a stricter target (see fig. 3). The footprint-based standard is applied to individual vehicle models based on the size of each vehicle. Because each manufacturer sells a different mix of vehicle sizes, under the proposed standards each manufacturer will have different CAFE and GHG emissions standards.

²⁰Vehicle tailpipe emissions of carbon dioxide account for 90 to 95 percent of all vehicle GHG emissions.

NHTSA first adopted a footprint-based approach—as opposed to a single fleetwide standard—for model year 2008 through 2011 light truck standards.²¹ A number of the experts we interviewed supported the current approach of subjecting both passenger car and light truck fleets to footprint-based standards. In the model year 2008 through 2011 light truck rule, NHTSA cited several potential benefits of a footprint-based approach over a single, fleetwide CAFE standard, including the following:

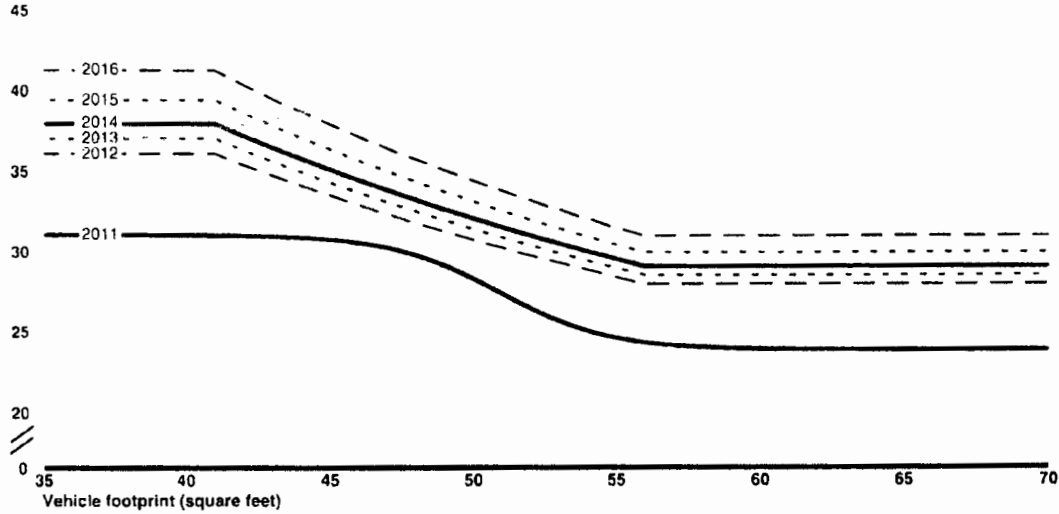
- *Larger reductions in oil consumption.* Oil consumption would be reduced because automakers would be required to improve the fuel economy of vehicles of all sizes rather than only those near the standard.
- *Enhanced safety.* Manufacturers would not have an incentive to comply with CAFE standards by pursuing strategies that compromise safety—such as (1) reducing the size of vehicles (applicable fuel-economy targets now become higher as size decreases) or (2) designing models to be classified as light trucks rather than cars, which can increase a vehicle's propensity to roll over—in order to comply with CAFE standards. Under a single standard, manufacturers could reduce vehicle size as one approach for CAFE compliance.
- *More even disbursement of the regulatory cost burden.* Fuel-economy improvements would be spread across the industry, instead of concentrating on manufacturers of heavier, lower fuel-economy vehicles.
- *Addressing concerns about consumer choice.* Manufacturers now must improve the fuel economy of all light trucks, regardless of size, which addresses criticisms that single, fleetwide CAFE standards were hindering the efforts of some companies to offer a mix of vehicles matching consumer desires. For instance, under the previous system, instead of installing more fuel-saving technologies across their fleets, manufacturers might have moved toward building fewer large vehicles and more small vehicles to meet new CAFE standards, even though consumers typically have not demanded small vehicles. In a footprint-based standard, manufacturers must improve the fuel economy of all light trucks, no matter their size.

²¹For model year 2008 through 2010 light trucks standards, manufacturers could opt to comply with the reformed footprint-based standards or an equivalent single fleetwide standard. Only General Motors opted to voluntarily comply with the reformed standard in 2008 and 2009. Starting with model year 2011 light trucks, all manufacturers must adhere to the footprint-based standard.

Figure 3: Proposed CAFE Footprint Curves for Passenger Cars and Light Trucks, Model Years 2012 through 2016 and Existing 2011 Curve

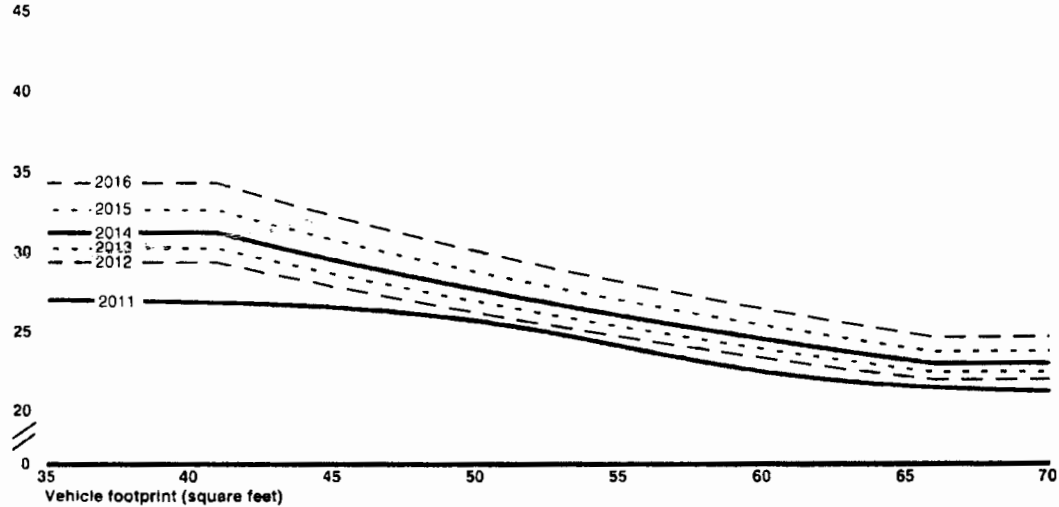
Passenger cars

CAFE target (MPG)



Light trucks

CAFE target (MPG)



Source: Notice of Proposed Rulemaking for CAFE standards for MY 2012 to 2016.

The CAFE requirement for each manufacturer—which is the basis for determining compliance²²—will be determined at the end of the model year based on actual production. For example, manufacturers selling a greater proportion of large vehicles will have a lower average target to meet than will manufacturers focusing on smaller vehicles. Based on estimated sales projections, the proposed targets are estimated to achieve an average of 34.1 mpg across all model year 2016 vehicles sold.

While NHTSA and EPA expect benefits from adopting a standard based on vehicle footprint and predict that the administration's goal of a fleetwide average 34.1 mpg and 250 grams per mile carbon dioxide in 2016 will be met, there is no guarantee that a specific national target will be achieved.²³ This is a tradeoff of adopting a footprint standard compared to the single national CAFE standard NHTSA used in the past. Because the actual fleetwide fuel-economy levels will depend on actual vehicle sales—specifically, the size of cars consumers buy—there is the possibility that the actual fleetwide mpg in 2016 will be higher or lower and realized costs and benefits of the standards will be higher or lower than estimated. For example, even though all of the vehicles in each manufacturer's fleet may be in compliance with its footprint-based requirement, manufacturers may sell a greater number of large-footprint vehicles than predicted, which would lower each manufacturer's CAFE requirement. If this is the case, the national fleet may not reach the target of 34.1 mpg by 2016, and the estimated benefits of the standards, which assume achieving a national fleetwide average of 34.1 mpg, would not be fully realized.²⁴ The opposite, however, could also be the case. If a greater number of smaller vehicles (generally with higher CAFE levels) are sold than expected, manufacturers will have higher CAFE requirements, the national fleet may exceed the












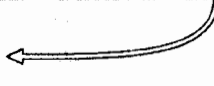
²²Manufacturer compliance will be determined based on the fuel economy levels of actual vehicles produced compared with the CAFE footprint standard for each of those vehicles.

²³The administration's goal has often been stated as a fleetwide average of 35.5 mpg. This value is equivalent to the 250 grams per mile carbon dioxide value if all of the carbon dioxide reductions come from fuel economy improvements.

²⁴Some public comments on the Notice of Proposed Rulemaking suggested that NHTSA should mitigate against this possibility by imposing a "backstop"—a minimum CAFE standard that all manufacturers would be required to meet regardless of the footprint of their vehicles. EISA requires a backstop standard for domestically-manufactured passenger cars of either 27.5 mpg or 92 percent of the average projected fuel economy level of passenger cars in any given model year, whichever is greater. However, NHTSA did not include a backstop for imported passenger cars or light trucks in the September 2009 proposed rule.

target of 34.1 mpg, and estimated benefits assuming a fleetwide average of 34.1 mpg would be exceeded (see fig. 4). Similar scenarios could occur with respect to EPA's GHG standards.

Figure 4: Potential Scenarios for Meeting CAFE Targets, Based on Varying Vehicle Sales

	Vehicle 1  Small vehicle CAFE level: 38.1 MPG	Vehicle 2  Average size vehicle CAFE level: 34.1 MPG	Vehicle 3  Large vehicle CAFE level: 30.9 MPG
Scenario #1 (CAFE target met)	Sales=100,000 vehicles	Sales=100,000 vehicles	Sales=100,000 vehicles
	   Total fleet average = 34.1 MPG		
Scenario #2 (CAFE target not met)	Sales=50,000 vehicles	Sales=100,000 vehicles	Sales=150,000 vehicles
	   Total fleet average = 33.0 MPG		
Scenario #3 (CAFE target exceeded)	Sales=150,000 vehicles	Sales=100,000 vehicles	Sales=50,000 vehicles
	   Total fleet average = 35.3 MPG		

Source: GAO analysis of proposed CAFE standards.

Variation in the Standards, Which Result Primarily from Differences in Legal Authorities, May Present Challenges, but GHG Penalties May Increase Compliance

Several key differences between the EPA and NHTSA standards largely arise from the legal authorities under which the standards are set. NHTSA's authority to administer the CAFE program is derived from EPCA, as amended by EISA, requires that NHTSA, for passenger cars and light trucks in each future model year, establish standards at "the maximum feasible average fuel-economy level that it decides manufacturers can achieve in that model year." EPCA further directs NHTSA to make this determination based on consideration of four statutory factors: technological feasibility, economic practicability, the effect of other standards of the government on fuel economy, and the need of the nation to conserve energy. However, the law does not direct NHTSA on how to balance these four factors—which can conflict—thereby giving NHTSA discretion to define, give weight to, and balance the four factors based on the circumstances in each CAFE rulemaking. Furthermore, how NHTSA balances these four factors can vary from rulemaking to rulemaking. For example, in the model year 2012 through 2016 rulemaking, NHTSA cited

economic practicability concerns—given the state of the economy and the financial state of automakers—to set standards at a level lower than it otherwise could have in accordance with Office of Management and Budget (OMB) guidelines on federal regulatory impact analysis.²⁵ In addition to the four statutory factors, NHTSA also considers the potential for adverse safety consequences and consumer demand when establishing CAFE standards.

EPA's authority to set GHG standards is derived from the CAA, which authorizes EPA to regulate emissions of air pollutants from all mobile source categories. EPA must prescribe standards for the emission of any air pollutant from motor vehicles which causes or contributes to air pollution that endangers public health or welfare. In prescribing these statutory standards, EPA considers such issues as technology effectiveness, cost of compliance, the lead time necessary to implement the technology, safety, energy impacts associated with the use of the technology, and other impacts on consumers. EPA has the discretion to consider and weigh these various factors, particularly those related to issues of technical feasibility and lead time.

Some differences affect the process each agency must use to set standards, which in turn leads to key differences between the standards. For example, EPCA requires that EPA, in testing fuel economy of passenger vehicles, use 1975 test procedures or procedures that give comparable results under which air conditioning is not turned on. As a result, manufacturers cannot realize the benefits of air conditioning improvements for complying with CAFE standards, and NHTSA has, to date, not taken into account air conditioning improvements when setting CAFE standards.²⁶ Under the CAA, however, EPA is not subject to the same limitations, and its proposed GHG standards account for air conditioner improvements. Specifically, the mpg equivalent of EPA's 2016 target of 250 g/mi of CO₂ emissions corresponds to 35.5 mpg. The CAFE target is 34.1 mpg because it cannot account for air conditioning improvements.

In addition, certain flexibility mechanisms designed to achieve and reduce the cost of compliance are authorized by one program but not the other.

²⁵OMB Circular A-4, September 17, 2003.

²⁶However, in the current proposed rule, NHTSA sought comment on providing manufacturers with CAFE credits for improving air conditioner efficiency for light trucks.

This creates potential challenges to harmonization and for manufacturers attempting to manage the design of a fleet. For example, EPA's proposed GHG standards offer a "temporary lead time" mechanism for manufacturers that sell a limited number of vehicles in the U.S.²⁷ Although this specific flexibility does not exist in the CAFE standards, under EPCA, NHTSA may exempt qualifying small-volume manufacturers (defined as manufacturers that produce under 10,000 vehicles worldwide annually) from the passenger car standard for a model year. As a result, manufacturers that are able to take advantage of EPA's temporary lead time mechanism to comply with GHG standards may face challenges in complying with CAFE standards. Some experts we met with said that these inconsistencies in flexibility mechanisms between the two sets of standards may present challenges to some manufacturers in meeting the harmonized standards.

Mechanisms available for enforcing the standards also differ between the two agencies due to statutory differences. For example, the Clean Air Act prohibits the sale of vehicles without a certificate of conformity from EPA which indicates that the vehicle meets applicable emission standards.²⁸ If EPA determines that a vehicle does not meet the emission standards, it may not issue a certificate, thus preventing the manufacturer from legally selling the vehicle. The Clean Air Act also gives EPA authority to recall noncompliant vehicles. NHTSA can take neither of these actions. Because a CAFE standard applies to a manufacturer's entire fleet for a model year, CAFE fines are assessed for the entire noncomplying fleet. Pursuant to EPCA, fines associated with CAFE noncompliance are currently \$5.50 for every tenth of an mpg a manufacturer's fuel economy is short of the standard multiplied by the number of vehicles in a manufacturer's fleet for a given model year. NHTSA recognizes that some manufacturers regularly pay fines instead of complying with CAFE standards; in particular, many European manufacturers pay fines each year. Fines for CAFE standards have not been increased since 1997, and GAO has reported that, as a result, CAFE penalties may not provide a strong enough incentive for manufacturers to comply with CAFE. NHTSA officials noted that under EPCA, NHTSA has the authority to raise the fines up to \$10 per tenth of an mpg. However, raising fines requires an analysis finding that substantial energy conservation would result and that raising fines would not have

²⁷This allowance is available during model years 2012 through 2015 to manufacturers whose vehicles sales in the U.S. in model year 2009 are below 400,000 vehicles.

²⁸42 USCS § 7522(a)(1).

substantially deleterious impact on the U.S. economy. GAO has recommended that agencies collecting penalties regularly conduct these types of analyses.²⁹

In contrast to CAFE fines, penalties for violation of a motor vehicle emission standard under the CAA, which may be much higher, are determined on a per-vehicle basis. The CAA gives EPA broad authority to levy fines and require manufacturers to remedy vehicles if the agency determines there are a substantial number of noncomplying vehicles.³⁰ EPA must consider an assortment of factors, such as the gravity of the violation, the economic impact of the violation, the violator's history of compliance, and other matters,³¹ in determining the appropriate penalty. The CAA does not authorize manufacturers to intentionally pay fines as an alternative to compliance, and EPA does not include in its standard-setting modeling analysis the option for manufacturers to pay fines instead of compliance. Manufacturers may be subject to fines as high as \$37,500 per vehicle under Section 205 of the CAA. Given that fines for noncompliance with GHG standards may be higher than fines for noncompliance with CAFE, having harmonized standards may provide incentives to manufacturers that have traditionally chosen to pay CAFE penalties instead of complying with standards, to comply with both sets of standards.

²⁹See GAO, *Vehicle Fuel Economy: Reforming Fuel Economy Standards Could Help Reduce Oil Consumption by Cars and Light Trucks, and Other Options Could Complement These Standards*, GAO-07-921 (Washington, D.C.: Aug. 2, 2007) and GAO, *Civil Penalties: Agencies Unable to Fully Adjust Penalties for Inflation under Current Law*, GAO-03-409 (Washington, D.C.: Mar. 14, 2003).

³⁰74 Fed. Reg. 49454, 49477 (Sept. 28, 2009).

³¹42 U.S.C. § 7524(c)(2).

Although the
Agencies Closely
Collaborated and
Capitalized on EPA's
Recent Research in
Setting Standards,
Joint Rulemaking for
Future Standards Is
Not Guaranteed

EPA and NHTSA Are
Collaborating through a
Joint Rulemaking Process,
Which Represents an
Expansion of EPA's Role
Compared to Previous
CAFE Rulemakings

In conducting the joint rulemaking, the agencies have collaborated on major tasks. For example, the two agencies coordinated time frames so that key milestones of each rulemaking—such as issuance of the Proposed Rulemaking and time frames for public comment—happened at the same time. This enabled manufacturers to learn about both new standards at the same time and plan appropriately. Officials of both agencies told us that staff from both agencies met on a regular basis, often daily, to coordinate their efforts throughout the rulemaking process. In addition, according to agency officials, the two agencies formed a number of joint technical teams to examine data used in modeling efforts—for instance, one team examined data on automotive technology that can improve fuel economy and reduce GHG emissions—to ensure that both agencies were using similar data and making similar assumptions to develop standards. As a result of these efforts, each agency had significant input into the development of both sets of standards.

EISA mandated NHTSA to consult with both EPA and the Department of Energy (DOE) in prescribing CAFE standards beginning with model year 2011.³² NHTSA's use of EPA's expertise in environmental issues and DOE's expertise in energy efficiency in informing CAFE standards is important given CAFE's environmental and energy-security implications. For example, NHTSA has prepared draft and final environmental impact statements, as required by the National Environmental Policy Act, discussing the environmental implications of recent CAFE rulemakings,

³²Pub. L. No. 110-140, § 102(a).

and EPA has reviewed and provided input on that work. However, EPA's role in the joint CAFE and GHG emissions rulemaking goes beyond the EISA requirement for consultation. For example, EISA does not require either EPA or DOE to participate in CAFE rulemaking at as high a level as EPA has in the current joint CAFE and GHG emissions rulemaking.

This level of EPA involvement in the proposed 2012 through 2016 CAFE and GHG rulemaking is greater than EPA's involvement in previous CAFE rulemakings, particularly prior to NHTSA's proposal of CAFE standards for model year 2011. For the model year 2011 proposal, NHTSA and EPA staff jointly assessed which technologies would be available for those model years and their effectiveness and cost. They also jointly assessed key economic and other assumptions affecting the stringency of future standards. Finally, they worked together in updating and further improving the model that had been used to help determine the stringency of the model year 2008 through 2011 light truck standards. However, even in the rulemaking for model year 2011, EPA did not devote as many resources or have as much involvement in setting CAFE standards as it did in the model year 2012 through 2016 proposed CAFE and GHG rulemaking.

The increased involvement by EPA as an equal partner in the proposed model year 2012 through 2016 CAFE and GHG emissions rulemaking came at the direction of the current administration, when it announced plans to increase CAFE standards and introduce GHG emissions standards for vehicles. EPA officials noted that the involvement of the White House and clear directives to both the Secretary of Transportation and Administrator of EPA for a collaborative approach caused both agencies to commit to the joint process, which officials viewed as successful.

**Both NHTSA and EPA
Used Computer-Based
Models to Conduct
Analyses That Inform the
Level of Standards; Results
Were Largely Similar**

To determine the appropriate level of CAFE and GHG emissions standards, NHTSA and EPA each conducted its own regulatory impact analysis using computer models. NHTSA used a model developed by the Volpe National Transportation Systems Center (referred to as the Volpe model), earlier versions of which have been used in previous CAFE rulemakings. The model estimates the costs and benefits to manufacturers, consumers, and society of differing levels of CAFE standards. (See app. II for an in-depth description of NHTSA's Volpe model.) EPA developed a similar model called the Optimization Model for Reducing Emissions of Greenhouse Gases from Automobiles (OMEGA) to conduct a similar analysis of and inform its proposed GHG standards.

While the models are distinct from one another, and NHTSA and EPA each conducted its own modeling, the two agencies collaborated on and coordinated this work. In particular, the OMEGA model and Volpe model generally used consistent data inputs and assumptions—for example, the same economic assumptions and, to the extent possible given structural differences between the models, consistent data on vehicle fleets and fuel-saving technologies. According to officials from both agencies, the two agencies worked closely together to develop these data inputs and assumptions. NHTSA's and EPA's analyses are also structured similarly and have two components—one that attempts to determine manufacturer response to the standards and another that estimates the effects of the proposed standards on manufacturers, consumers, and society.

In addition, although the two models differ in several ways, analyses conducted with each model produced similar results, helping to validate each modeling effort. Some differences involve the treatment of compliance flexibilities or credits—mechanisms created in a standard to reduce the cost of compliance for manufacturers. Other differences involve how the models account for manufacturers conducting multiyear product planning and how technologies were carried over between model years. Both NHTSA and EPA conducted analyses of the respective effects of the proposed CAFE and GHG standards. However, despite differences between the two models, the aggregate results were largely similar.

**Although They
Collaborated Closely, the
Agencies Provided
Differing Levels of
Research and Studies to
Support Rulemaking**

Although NHTSA contributed research to the rulemaking process, it faced challenges in doing so. NHTSA contributed research on fuel efficiency and costs. For example, NHTSA officials said that they conducted new research related to estimating the rebound effect³³ and the costs of oil imports. In 2008, during the development of the model year 2011 rule, NHTSA contracted with an automotive consulting firm to review comments from stakeholders during the public comment period of the rulemaking, which resulted in some technology costs being updated.³⁴ NHTSA officials said that this work helped improve its analysis. NHTSA also contributed safety research. However, NHTSA has not recently

³³Rebound effect is the increase in vehicle miles traveled that result from the decreased costs of driving due to fuel economy increases.

³⁴For example, while a 2002 National Academy of Sciences study estimated the costs of applying reduced rolling-resistance tires at \$14 to \$56, the work with the consulting firm found the cost to be a range of \$6 to \$9.

undertaken new safety research to support the current proposed standards,³⁵ despite significant and ongoing controversy over vehicle safety and CAFE standards, as well as changes in technology available to reduce vehicle weight.³⁶ According to NHTSA officials, NHTSA has made such research a priority for the near-future in order to support future CAFE rulemaking.

In addition, while NHTSA contracted with the National Academy of Sciences (NAS) to provide an updated report on the costs of fuel-saving technologies,³⁷ and NAS held its first public meeting for this work in September 2007, this work was not completed in time to support analysis for the Notice of Proposed Rulemaking. EISA mandated NHTSA to contract with NAS to receive updates to its earlier report of fuel-saving technology cost and effectiveness in 5-year intervals until 2025. We noted in previous work that both experts and NHTSA officials said it would be ideal to complete and update such work before NHTSA issues a new car or light truck fuel-economy standard.³⁸ Also, NAS work on technology costs in 2002 was generally viewed by a wide range of experts as being thorough and unbiased. While NAS indicated in a preliminary report that it would finish its work by spring 2008, according to NAS officials, they required more time to acquire technology cost data than initially anticipated. As a result, the final NAS study has not yet been published and was not available to inform analysis for EPA and NHTSA's September 2009 Notice of Proposed Rulemaking.

³⁵However, the agency indicated in the proposed rule its intentions to refine its analysis for the final rule and sought comments to aid it in doing so.

³⁶As single fleetwide CAFE standards (as opposed to attribute-based standards) can lead to lighter and smaller vehicles being sold due to their generally higher levels of fuel economy, these vehicles are also generally less safe than larger and heavier vehicles. NHTSA's analysis of safety effects of the proposed standards relies on the findings of a 2003 study that has been met with criticism by a number of experts and stakeholders because other studies have produced conflicting results regarding the relationship between vehicle weight, size, and safety. Some experts we met with cited the need for additional research on these issues given the lack of consensus, conflicting research, and the availability of new technology such as lightweight but durable materials for vehicle frames.

³⁷This work is meant as an update to chapter 3 of the NAS study, *Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards* (National Academy Press, 2002).

³⁸GAO, *Passenger Vehicle Fuel Economy: Preliminary Observations on Corporate Average Fuel Economy Standards*, GAO-07-551T (Washington, DC: Mar. 6, 2007).

EPA contributed research in time to provide analysis for the proposed rule. It also contributed funding to a greater degree, especially when compared with past CAFE rulemakings where EPA's role was limited to consulting. For example, EPA conducted or contracted for three peer-reviewed studies to support the rulemaking and the modeling efforts. According to EPA officials, these studies included

- an ongoing \$1.1 million study done in conjunction with a consulting firm to determine the direct manufacturing costs of fuel-saving and GHG emissions-reducing technologies—a key input in both agencies' models;³⁹
- a \$40,000 assessment of indirect costs of manufacturing more fuel-efficient vehicles;⁴⁰ and
- a \$1 million vehicle simulation modeling study done in conjunction with a consulting firm to refine estimates of emissions reduction and fuel-economy improvements stemming from combinations of technology.⁴¹

These studies provided the analysis of both CAFE and GHG standards with updated information and data.

The difference in the extent of new research that NHTSA and EPA conducted for this rulemaking likely results from differences in resources available to the agencies in the recent past. As we mentioned previously, from fiscal years 1996 to 2001—about 6 years—NHTSA was prohibited from using appropriated funds to change CAFE standards. According to NHTSA, the agency lost staff with expertise in this area as a result and did not begin to hire additional automotive engineers until summer 2009. By comparison, EPA has been able to develop and maintain automotive engineering expertise. This expertise has proved helpful in setting GHG emissions standards for automobiles. For example, EPA has been home to the National Vehicle and Fuel Emissions Laboratory since 1971, and in the

³⁹ According to EPA staff, this study is still ongoing and the agency has expended \$1.1 million to date. They plan to continue this study to evaluate additional GHG emissions-reducing technologies. EPA, *Light-Duty Technology Cost Analysis Pilot Study*, EPA-420-R-09-020 (December 2009).

⁴⁰ EPA, *Automobile Industry Retail Price Equivalent and Indirect Cost Multipliers*, EPA-420-R-09-003 (February 2009).

⁴¹ EPA, *A Study of Potential Effectiveness of Carbon Dioxide Reducing Vehicle Technologies—Revised Final Report*, EPA-420-R-08-004a (June 2008).

early 1990s, it expanded its activities to conduct research and development of technologies used to reduce emissions, which are often marketed and licensed to the automobile industry. Although NHTSA brings safety expertise to CAFE standards, which has been a concern with raising CAFE standards in the past, the agency's primary mission and expertise is in vehicle safety, not vehicle power train design and the impact of vehicle emissions on the environment. Thus NHTSA cannot be expected to have the same level of in-house expertise related to vehicle power train design and environmental issues as EPA.

Although the Collaboration between NHTSA and EPA Resulted in Improvements, the Process Is Not Being Formalized or Documented for Future Use

Although the agencies had to work quickly, the joint proposed model year 2012 through 2016 rulemaking has met all of its milestones to date, and the agencies stated that the collaboration has been successful. This is the first time NHTSA and EPA are conducting a joint rulemaking together. The agencies conducted the joint rulemaking under tight time frames and have met all key milestones, such as publishing information about the rule and receiving and responding to public comments. However, the fast pace has left little time or resources to document any effective or efficient processes so they could be used in the future. From the administration's May 2009 release of the Notice of Upcoming Joint Rulemaking to the expected release of the rule, less than 11 months will have transpired. By comparison, according to NHTSA officials, other recent CAFE rulemakings have taken a minimum of 14 months. The accelerated timeline in the current rulemaking stemmed in part from the statutory requirement that NHTSA issue new CAFE standards 18 months prior to the beginning of the model year that will be affected and from the current administration's announcement regarding the development of the new standards in May 2009. In order to issue harmonized standards at the same time, both EPA and NHTSA had to adhere to an accelerated timeline.

Despite the dual challenge of conducting a joint rulemaking for the first time and on a compressed timeline, some experts we spoke with thought that the two agencies worked well with each other and hoped they would continue to do so. In addition, both agencies found the collaborative partnership to be successful. The proposed standards cover model years 2012 through 2016, and while it is not clear how fuel economy and GHG emissions will be regulated after 2016, industry stakeholders and others have said that they would like NHTSA and EPA to begin working on the next set of standards in the near future. Officials with the California Air Resources Board said that the state is already considering state GHG emissions standards that would take effect in 2017, and depending on the stringency of federal standards at that time, California may opt to

implement its own more stringent standards. Many industry stakeholders we interviewed said that they prefer a national program with harmonized standards over different federal and state standards because multiple standards could substantially increase compliance costs. Some expressed interest in EPA and NHTSA considering CAFE and GHG emissions standards for model years beyond 2016 as soon as possible in order to better ensure harmonized national standards and to give manufacturers appropriate lead time to meet standards.⁴²

Although we found interest in NHTSA and EPA developing standards for model years beyond 2016, two issues could prevent the agencies from replicating this effort in the future:

- *The processes for coordinating the rulemaking have not been documented by either agency.* Documented processes that the two agencies would follow—detailing how each communicated, shared resources, and set plans—would help ensure that best practices are followed and that resources are used efficiently. As GAO has reported,⁴³ such guidance can aid regulatory programs by improving efficiency and ensure that benchmarks and time frames are met. In addition, by publishing such documentation, the agencies can increase the transparency of their programs and processes. However, the two agencies have not documented the processes for use during future rulemakings, and officials at both agencies report they currently have no plans to do so. EPA officials, however, told us that documenting the processes would be a worthwhile task.
- *The two agencies are not legally required to continue coordinating in setting CAFE and GHG emissions standards.* As noted, EISA mandated NHTSA to consult with EPA and DOE in setting CAFE standards beginning with model year 2011. However, NHTSA is not required to work with EPA to the extent it has on this joint rule. The collaboration of these two federal agencies came at the direction of the current administration to provide regulatory certainty and ensure that a clear set of rules was established for all automobile manufacturers.

⁴²In addition, legislation may be enacted that would regulate GHG emissions from a wide range of sources on a national level, which could have an impact on CAFE and GHG emissions standards for vehicles. In June 2009, the House of Representatives passed such a bill—H.R. 2454, 111th Cong. (2009). The Senate is currently considering similar legislation in S. 1733, 111th Cong. (2009).

⁴³GAO, *Health and Safety Information: EPA and OSHA Could Improve their Processes for Preparing Communication Products*, GAO-08-265 (Washington, D.C.: Mar. 31, 2008).

NHTSA Improved the Analysis It Uses to Help Set CAFE Standards, and although Experts Still Expressed Some Concerns, They Lacked Consensus on Additional Improvements

NHTSA Evaluates Potential CAFE Standards Using the Volpe Model, Which Attempts to Simulate How Manufacturers Will Meet the Standards and Then Measures the Effects of the Standards

In part because NHTSA has previous experience in setting CAFE standards, we were asked to review any improvements NHTSA made to its process for setting CAFE standards.⁴⁴ We did so by looking in depth at NHTSA's regulatory impact analysis using the Volpe model, which has been used in previous rulemakings as well as the current proposed rule. It has been criticized by some experts in previous rulemakings for, among other things, a lack of transparency that limited public review. Because EPA is setting GHG emissions standards for the first time, we did not conduct a similar review of their modeling efforts using the OMEGA model.

The first key component of the Volpe model is a simulation of how manufacturers might comply with proposed CAFE standards. The "compliance simulation" of the Volpe model attempts to simulate each manufacturer's most cost-effective strategy to make its fleet comply with a more stringent CAFE standard by incorporating technologies until the manufacturer achieves compliance, exhausts all available technologies, or pays fines for noncompliance when it becomes more cost-effective than incorporating additional technologies. It relies on several key sources of data, including

⁴⁴In 2007, GAO reported on concerns with NHTSA's analysis in setting CAFE standards. Specifically, we found that experts were concerned about the values used for certain inputs, such as the estimated social cost of carbon dioxide emissions, that NHTSA officials used in the computer model maintained by DOT's Volpe Center. See GAO-07-921.

-
- the "baseline vehicle fleet," a forecast of the vehicle models manufacturers will produce for sale in the U.S. in future model years;
 - a list of available fuel-saving technologies, categorized into five groups;⁴⁵
 - estimates of the costs, effectiveness in reducing fuel consumption, applicability, and availability of these technologies; and
 - pathways that estimate available fuel-saving technologies and the order in which manufacturers could take advantage of these technologies to most cost-effectively meet new CAFE standards.

This technology simulation is run for each vehicle model in the baseline fleet and produces an estimate of each vehicle's new fuel economy, weight, and total cost after the manufacturer has modified the vehicle in response to the CAFE standard. The compliance simulation's output is a forecast of model years 2012 through 2016 vehicles—namely, a re-engineered fleet of vehicles with new prices, fuel types, fuel-economy values, and weights to reflect the changes manufacturers would make to their vehicles to meet the proposed model year 2012 through 2016 CAFE standards. The data for each vehicle in the forecasted model year 2012 through 2016 fleet is then used in the second portion of the analysis.

This "calculation of effects" is the second key component of the Volpe model, which uses the compliance simulation data to estimate the costs and benefits of potential changes to the CAFE standard to manufacturers, consumers, and society as a whole. It uses a variety of data inputs, including fuel prices projected for the lifetimes of the vehicles in the fleet, the economic costs of fuel consumption, and damage costs for criteria pollutants.⁴⁶ This analysis produces information on the estimated benefits and costs of higher CAFE standards, such as the benefit to consumers of fuel savings from driving more fuel-efficient vehicles, increases in new vehicle prices, changes in the number of vehicle miles traveled, and the societal benefits of reductions in carbon dioxide emissions. The estimated

⁴⁵These groups are engine, transmission, electrification/accessory, hybrid, or vehicle.

⁴⁶Ground-level ozone, particulate matter, carbon monoxide, nitrogen oxides, sulfur oxides, and lead are called criteria pollutants because EPA regulates them by developing human health-based or environmentally-based criteria (science-based guidelines) for setting permissible levels.

costs and benefits are used by NHTSA to set CAFE standards at a level that appropriately balances their costs and the benefits.

NHTSA Made Several Improvements to Its Analysis That Could Help NHTSA Better Estimate the Costs and Benefits of Increasing CAFE Standards

Transparency

To increase the transparency of inputs to the Volpe model for the 2012 through 2016 rulemaking, NHTSA used publicly available data to develop the model's baseline vehicle fleet. In previous rulemakings, NHTSA developed its baseline fleet by using confidential product plans submitted by manufacturers that described the vehicles manufacturers planned to sell in the U.S. in future years.⁴⁷ However, manufacturers submitted these plans to NHTSA as confidential business information, and NHTSA could not make these plans available to the public.⁴⁸ Comments submitted as part of prior CAFE rulemakings, as well as several experts we spoke to, indicated that the lack of transparency regarding NHTSA's use of product plans was troublesome because researchers could not replicate NHTSA's analysis. In developing their respective models for the joint rulemaking, NHTSA and EPA used a baseline fleet that drew primarily from public and commercially available information to make their analyses more transparent and provide additional validation of the results of their analyses.⁴⁹ Specifically, NHTSA and EPA relied almost entirely on information sources such as model year 2008 vehicle sales data, EPA's emission certification and fuel-economy database, and vehicle sales forecasts from several public sources.

⁴⁷Specifically, NHTSA used product plans to obtain estimates of the volume of each vehicle model a manufacturer expects to produce for sale in future model years, as well as detailed information on the characteristics of individual vehicle models including engines, transmissions, and other technology.

⁴⁸See 49 CFR Part 512.

⁴⁹The same vehicle baseline was used in EPA's OMEGA model.

There are several advantages of using public and commercially available data more extensively than product plans. First, federal regulatory analysis from OMB recommends that analyses be transparent to allow third parties to determine how the model produces its estimates and conclusions. By increasing the transparency of the baseline vehicle fleet, NHTSA allowed outside experts the opportunity to review the model's inputs and outputs and replicate the results of the model to better ensure that its analysis is thorough and sound. Second, because the submission of product plans is strictly voluntary, NHTSA has not consistently received complete information from all manufacturers with U.S. sales, which has inhibited its ability to forecast the future vehicle fleet across manufacturers using that data. Although several companies submit nearly complete product plans, others submit only partial plans, while still others do not submit any information. NHTSA also indicated it could save staff time by not having to correct errors in the manufacturers' submissions that NHTSA does receive.⁵⁰ Third, by using actual fuel-economy test data from model year 2008 vehicles, NHTSA would be able to use this verified fuel-economy information, rather than the estimates of the fuel-economy performance from vehicles' manufacturers.

Despite these advantages, there are some disadvantages to using the publicly available model year 2008 data to establish the baseline vehicle fleet. For example, by forecasting the model year 2012 through 2016 vehicle fleet using model year 2008 vehicle data, NHTSA and EPA's baseline includes vehicles that have been eliminated or for which production has been reduced, such as the Chrysler PT Cruiser and Hummer H2. It also does not include several vehicle models and technologies that manufacturers have recently introduced or plan to introduce, such as Ford's EcoBoost system (a package of engine technologies that in combination significantly improve fuel economy), the Honda Insight (a conventional hybrid), Chevrolet Volt (a plug-in hybrid electric vehicle), or Nissan's all-electric LEAF.⁵¹ In addition to specific vehicles, NHTSA's baseline vehicle fleet forecast does not account for broad-scale changes to vehicle lines that manufacturers have started, such as Chrysler's plans to use Fiat power trains to offer small and medium-

⁵⁰ For example, as reported in the proposed rulemaking, one manufacturer's product plans contained important errors in estimates of vehicle footprints.

⁵¹ A conventional hybrid uses both gasoline and energy stored in a battery to power the vehicle. A plug-in hybrid can be plugged into an electrical outlet to charge a battery that can power the vehicle.

Technology Data and Economic Inputs

sized cars. Finally, NHTSA has found it difficult to determine, from either public or commercial sources, a number of specific data used in the baseline, such as information on electric power steering and reduced rolling-resistance tires. Consequently, NHTSA has had to use a small amount of data from product plans submitted in spring 2009 to fill these data gaps. NHTSA is also consulting with manufacturers regarding the possible release of model year 2010 or model year 2011 product plans that NHTSA could use in its development and analysis of the final model year 2012 through 2016 standards. Despite these disadvantages, NHTSA, EPA, and several experts we spoke to believe that the new transparency of its analysis outweighs the limitations of using public and commercially available data to establish its baseline.⁵²

In the proposed model year 2012 through 2016 rule, NHTSA updated values for several data inputs in the Volpe model compared to its previous rulemakings, based on its own reviews of published research and several studies EPA conducted:

- *Technology data.* NHTSA reviewed the technology cost information used for model year 2011 CAFE standards, revising the cost estimates for several key fuel-saving technologies and reviewing and incorporating estimates of the effectiveness (i.e., fuel-saving improvements in mpgs) of these technologies (see fig. 5 for an example of technology cost and effectiveness estimates). To determine technology cost estimates for the proposed rule, NHTSA and EPA reviewed the cost information in NHTSA's model year 2011 final rule, EPA's 2008 Staff Technical Report, and other sources.⁵³ The agencies revised component costs for several key

⁵²In addition, NHTSA solicited public comments in the Notice of Proposed Rulemaking on the methodology and data sources used to develop the baseline vehicle fleet and the reasonableness of the results.

⁵³These sources include the 2002 NAS report, the 2004 Northeast States Center for a Clean Air Future study, the 2004 California Air Resources Board Initial Statement of Reasons in support of their carbon rulemaking, a 2006 study by Energy and Environmental Analysis for DOE, a study by the Martec Group for the Alliance of Automobile Manufacturers and the 2008 update to that study, and vehicle fuel economy certification data. Both agencies also reviewed published technical literature that addressed the issue of CO₂ emission control and fuel economy, such as papers published by the Society of Automotive Engineers and the American Society of Mechanical Engineers. In addition, confidential data submitted by vehicle manufacturers in response to NHTSA's request for product plans, and confidential information shared by automotive industry component suppliers in meetings with EPA and NHTSA staff held during the second half of the 2007 calendar year were used as a cross-check of the public data mentioned above but not as a significant basis for the proposed model year 2012 through 2016 rule.

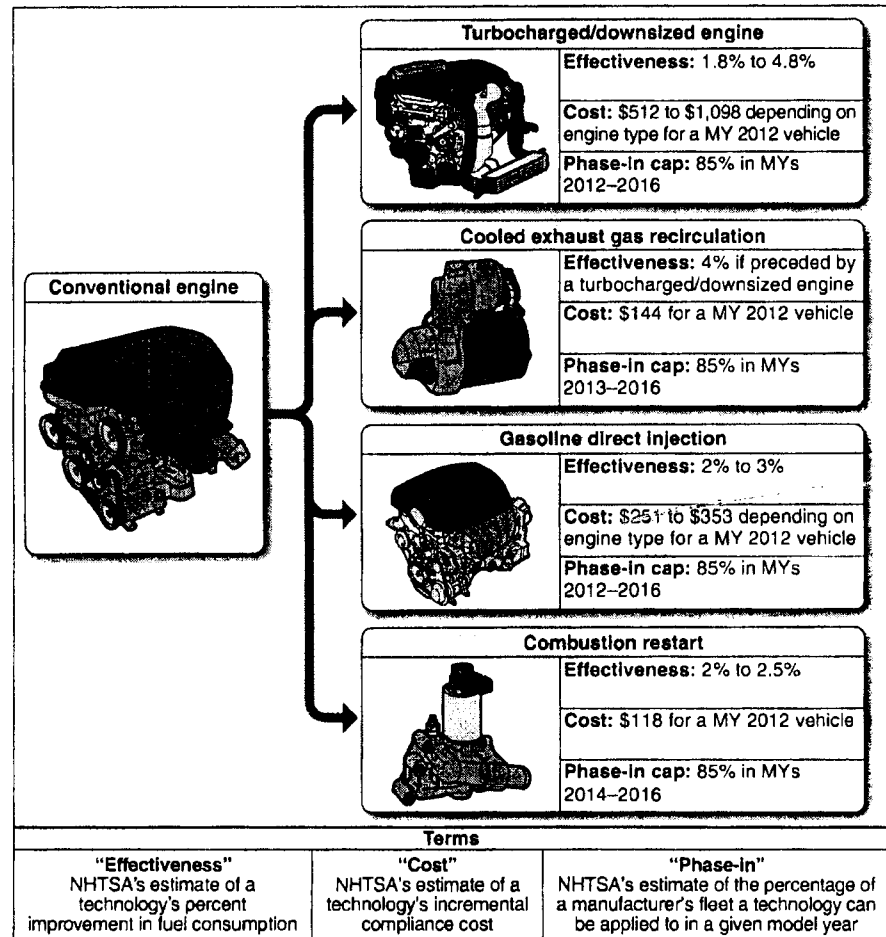
technologies. For example, NHTSA revised the cost of turbocharging and downsizing an engine⁵⁴—a cost range of \$512 to \$1,098, depending on engine type, compared to the range of \$822 to \$1,129 used for the model year 2011 CAFE standards—using data available from EPA's ongoing teardown study⁵⁵ with FEV, an automotive research, design, and development company. It also revised the costs of several other key technologies such as cylinder deactivation⁵⁶—a cost range of \$28 to \$190, compared to the range of \$306 to \$400 used for the model year 2011 CAFE standards. However, despite this concerted effort, NHTSA and EPA were not able to make further refinements because the anticipated NAS study of vehicle technology was not completed on schedule.

⁵⁴Turbocharging and downsizing reduces an engine's pumping losses at lighter loads in comparison to a larger engine by increasing the rate at which the engine is able to draw air into the engine's combustion chambers.

⁵⁵A teardown study is a study in which a vehicle is disassembled in order to determine the specifications of its components, including their costs.

⁵⁶Cylinder deactivation can improve the efficiency of the engine by disabling or deactivating (usually) half of the cylinders when the load is less than half of the engine's total torque capability. In cylinder deactivation, the valves are kept closed, and no fuel is injected. As a result, the trapped air within the deactivated cylinders is simply compressed and expanded as an air spring, with reduced friction and heat losses. The active cylinders combust at almost double the load required if all of the cylinders were operating. Pumping losses are significantly reduced as long as the engine is operated in this "part-cylinder" mode.

Figure 5: Example of Incremental Cost and Effectiveness Estimates for Technology Applications



- *Indirect costs to manufacturers.* NHTSA adopted research that EPA had contracted for to refine estimates of the indirect costs to manufacturers of manufacturing more fuel-efficient vehicles. These costs include research and development and marketing costs associated with the introduction of a new technology and give decision makers a more comprehensive view of the total costs a manufacturer would incur for implementing new technology than direct costs alone can provide. EPA supplemented an initial contractor report on this subject with an additional in-house study, which involved significant staff resources.

-
- *The social cost of carbon dioxide emissions.* NHTSA adopted an estimate of the damage resulting from carbon dioxide emissions that is more in-line with recent scientific and economic research, leading to a better reflection of the estimated benefits of increased CAFE standards related to reductions in GHG emissions. In the model year 2008 through 2011 light truck rule, NHTSA declined to include an economic value for reducing GHG emissions, citing the wide variation in published estimates of GHG emissions costs. However, a November 2007 federal court decision found that NHTSA's decision to not provide a monetized estimate of the benefit of reducing GHG emissions was arbitrary and capricious.⁵⁷ For the proposed model year 2012 through 2016 standards, NHTSA is using estimates of \$5, \$10, \$20, \$34, and \$56 per metric ton of carbon dioxide—with an emphasis on the \$20 value. These values, also adopted by EPA in its analysis, reflect the current administration's interim set of estimates of the social cost of carbon for agencies to use in regulatory analyses until a federal interagency working group develops a more comprehensive estimate for use in future economic and regulatory analyses.
 - *Projected fuel prices.* NHTSA used the most recent and updated projections of fuel prices provided by the Energy Information Administration (EIA) to place a value on the fuel-saving costs and benefits of different CAFE standards. Among other things, the monetized benefits of the new CAFE standards are more sensitive to changes in fuel prices, meaning that the estimated benefits of more stringent CAFE standards will increase or decrease to a greater extent in response to changes in the price of fuel compared to changes in other variables. For the current proposal, NHTSA is using a range of prices from \$2.50 in 2011 to \$3.82 in 2030, which is consistent with the EIA's 2009 main fuel price projections,⁵⁸ and is focusing on an average retail gas price of \$3.77 per gallon in 2007 dollars. In addition, NHTSA is reviewing the EIA's high and low fuel price projections to determine a range of potential costs and benefits, a best practice recommended by OMB guidance.⁶⁰ In projecting fuel prices, EIA considers recent and likely future developments in the world oil market,

⁵⁷*Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F.3d 508 (9th Cir. 2007).

⁵⁸EIA's main price projection is its Reference Case, which represents EIA's current judgment regarding exploration and development costs and accessibility of oil resources in countries that are not members of the Organization of the Petroleum Exporting Countries (OPEC).

⁶⁰In the EIA's 2009 Annual Energy Outlook, the High Oil Price Case uses a range of prices from \$3.36 in 2011 to \$5.47 in 2030, and the Low Oil Price Case uses a range of prices from \$2.19 in 2011 to \$2.04 in 2030.

the effect of the current geopolitical situation on oil supply and prices, and conditions in the domestic fuel supply industry that affect pump prices. However, EIA projections have at times underestimated gas prices, most recently in 2008 during the price spike. Several experts we spoke to noted that gas prices are extremely difficult to predict.⁶⁰ However, most of the experts we spoke to also indicated that despite its limitations, EIA is the most credible source for projected fuel prices. Although EIA officials told us they do not issue guidance to agencies on how to use EIA projections in regulatory impact analyses, they expect agencies to consider that events EIA cannot predict will impact energy demand and fuel prices.

By applying the best research available, NHTSA should obtain better estimates of the benefits and costs of higher CAFE standards and allow standards to be set at a level better reflecting those benefits and costs.

More Thorough Analysis

In line with OMB guidance on federal regulatory analysis, NHTSA conducted more thorough analyses in the proposed model year 2012 through 2016 standards than in previous CAFE rulemakings, including the model year 2008 through 2011 light truck rule. First, NHTSA tested and compared the benefits and costs of a greater number of CAFE levels set at different stringencies (also known as alternative scenarios) than it has in the past. By doing so, NHTSA gives decision makers a better picture of which level of CAFE standards provides the best balance between costs and benefits. NHTSA doubled the number of alternative CAFE scenarios it has tested from four to eight since the model year 2008 through 2011 light truck final rule. Specifically, NHTSA considered scenarios in which fuel-economy levels are increased at an annual average rate ranging from 3 to 7 percent, as well as scenarios in which the benefits are modified—for example, selecting a level at which the total costs of new CAFE standards are equal to their total benefits or a level that maximizes the net benefits of new CAFE standards to society. As a result, NHTSA was able to provide more comprehensive information for decision makers and increase public understanding of NHTSA's process for setting standards.

⁶⁰For example, in its analysis for the model year 2008 through 2011 light truck rule, NHTSA proposed using EIA's reference price case but received comments critical of this decision in light of retail fuel prices that were significantly higher than EIA's reference case. For the final model year 2008 through 2011 light truck rule, NHTSA considered the comments the agency had received and decided to use the EIA's high price case to more accurately estimate the trajectory of gas prices in the future.

However, NHTSA also considered factors external to the model in determining the level of the proposed model year 2012 through 2016 standards. Although OMB guidance on regulatory analysis specifies that agencies should select the scenario that maximizes the net benefits of the regulatory action to society, NHTSA did not propose to select the “maximum net benefits” scenario as its preferred alternative for the standards in the proposed rule. Instead, NHTSA proposed to select a scenario in which CAFE standards increase at an average rate of 4.3 percent per year. According to NHTSA officials, that decision was justified because the four statutory factors that they must weigh when setting CAFE standards outweigh OMB guidance.⁶¹ Several experts we spoke to said that NHTSA’s decision was justified because selecting the “maximum net benefits” scenario would have resulted in CAFE standards that automobile manufacturers could not realistically meet without making significant tradeoffs. For instance, one expert thought manufacturers would have to change their fleet mix to build and sell smaller vehicles and would have to pass on substantial costs to consumers, which could reduce vehicle sales. In addition, another expert thought that if lead time is not sufficient, manufacturers will not be able to hire staff quickly enough to handle the additional work.

Additionally, as provided for in OMB guidance, NHTSA expanded its use of two types of uncertainty analysis, which differs from previous rulemakings. Specifically, relative to previous rulemakings, NHTSA expanded its sensitivity testing and probabilistic uncertainty analyses, both of which assess the uncertainty associated with key assumptions and inputs in its analysis, in comparison to previous rulemakings. NHTSA’s sensitivity analysis and probabilistic uncertainty analysis test whether variability in the values of key model inputs would dramatically affect the costs and benefits of a potential CAFE level. The variability of key inputs may arise from different estimates of credible studies or simply be the result of limited current knowledge. These sensitivity and uncertainty analyses provide decision makers with a sense of which potential CAFE level, despite the variability of key inputs, will best balance benefits and costs. In comparison to the model year 2008 through 2011 light truck rule, NHTSA’s current sensitivity and probabilistic uncertainty analyses considered more case scenarios focusing on a number of critical inputs, including projections of fuel prices, the rebound effect, the value of

⁶¹ According to the proposed rule, standards set based on maximizing net benefits would reach an estimated 40.9 mpg fleet average in model year 2016.

reducing carbon dioxide emissions, and the military security benefits of reducing fuel consumption, of which variability in one input or a combination of inputs may affect the results of the overall analysis.

Experts Continue to Have Concerns about the Model, but Do Not Agree on How to Further Improve Inputs to the Model

As part of this work, we spoke with a number of experts familiar with the Volpe model about their assessment of the data used in the model. Although they provided criticism, they did not agree on what needed to be improved (see app. I for information on experts with whom we consulted). In general, nearly all of the experts we spoke to offered some critique of the model and its data. For instance, some, but not all, experts said that NHTSA was too cautious in updating the values for variables such as the social cost of carbon dioxide emissions, given the state of current research. These experts said that NHTSA was underestimating the social cost of carbon dioxide emissions, which would lead to an underestimation of the benefits of CAFE standards and the establishment of standards set at a lower than ideal level. However, we could not find general consensus among experts we spoke to that NHTSA should have modified values for specific variables or made other improvements to the model. For example, NHTSA used a lower value for the rebound effect⁶² (10 percent) to more closely align with values identified in recent research. Several experts thought that NHTSA should have adopted the value (5 percent) identified in the research, which was even lower than what NHTSA used, while others thought that NHTSA's more cautious approach was appropriate until additional studies using different data sets verified the findings.

We did find considerable controversy among experts over the potential safety impact of weight reduction in vehicles—much more so than for other variables assessed in the Volpe model.⁶³ While some experts stated that manufacturers could safely reduce vehicle weight while maintaining the size of the vehicle by substituting lightweight but durable materials for heavier materials (material substitution), other experts maintained that any effort to reduce vehicle weight would adversely affect safety. Two studies, one developed by NHTSA (Kahane study)⁶⁴ and a second

⁶²Rebound effect is the increase in vehicles miles traveled that result from the decreased costs of driving resulting from fuel economy increases.

⁶³While monetized values for safety with respect to loss of life are not included as an input in the Volpe model, safety impacts are considered in determining the appropriate level for CAFE standards.

⁶⁴Charles J. Kahane, *Vehicle Weight, Fatality Risk and Crash Compatibility of Model Year 1991-99 Passenger Cars and Light Trucks*, DOT HS 809 662, October 2003.

conducted by an automotive engineering consulting firm (Dynamic Research, Inc., study),⁶⁵ came to different conclusions on this issue, and to date, no subsequent study has been conducted in a manner designed to resolve the conflict. DOE has sponsored research through the Lawrence Berkeley National Laboratory that examines the relationship between vehicle weight and driver casualty risk using police-reported crash data and CAFE compliance records, but given the high level of ongoing controversy, this approach may not satisfy all the experts invested in this issue. In addition, neither the Kahane study nor the Dynamic Research, Inc., study were able to assess directly how material substitution as a particular approach to weight reduction could affect safety because the vehicles analyzed in the two studies were limited to model years 1985 through 1999. During this period, CAFE standards were not attribute-based, and manufacturers had a greater incentive to improve fuel economy by reducing vehicle size rather than by reducing vehicle weight through material substitution. In addition, several experts noted that by using the Kahane study in its current work, NHTSA may be overestimating the safety implications of higher CAFE standards because the study does not consider technology solutions like material substitution as an option that could improve fuel economy without negatively affecting safety. Because NHTSA accounts for the safety effects of proposed standards by estimating their safety implications, relying on this research in the future could result in standards being set at a lower level. In the past, concerns about safety have prevented non-attribute-based CAFE standards from being increased.

We also learned from experts that vehicle safety is challenging to address because the safety tradeoff between larger, heavier vehicles and smaller, lighter vehicles does not lend itself to a clear policy solution. Generally, larger and heavier vehicles, which enhance the safety of their passengers as a result of their size and weight, pose a greater safety threat to other vehicles on the roadways than smaller, lighter cars do. Conversely, although smaller, lighter cars pose less of a threat to other vehicles on the road, they cannot provide the same degree of safety to their passengers that larger, heavier vehicles do. The degree of difference in the size and weight of vehicles has some bearing on passenger safety: larger, heavier vehicles provide their passengers safety benefits and impose on others

⁶⁵R.M. Van Auken and J.W. Zellner, Dynamic Research, Inc., *Supplemental Results on the Independent Effects of Curb Weight, Wheelbase, and Track on Fatality Risk in 1985-1998 Model Year Passenger Cars and 1985-1997 Model Year LTVs*, DRI-TR-05-01 (Torrance, Calif., May 2005).

safety costs, while smaller, lighter vehicles provide others safety benefits and impose on their passengers safety costs. Several experts with whom we spoke thought that additional research was needed to better understand the relationship between vehicle size, weight, and safety, as well as to identify how best to reduce the weight of vehicles in a manner that creates the least risk. Experts recommended several different methodological approaches to assess this relationship, including future studies that examined material substitution in accident outcomes once vehicles with this technology became more prevalent in the fleet. Others recommended the use of computer crash simulation modeling to identify best practices in the use of material substitution.

**Largely Due to
Resource Constraints,
NHTSA Has Limited
Plans to Assess the
Model Year 2008
through 2011 Light
Truck CAFE
Standards or Key Data
Used to Develop the
Standards**

Federal agencies can use retrospective analyses of rulemakings to help determine the extent to which the expected costs, benefits, and goals of a regulation are being realized.⁶⁶ A retrospective analysis of CAFE standards could help NHTSA and Congress determine the extent to which goals of the standards—such as improvements in fuel economy—are being met and provide insight into ways to improve the standards. In addition, a retrospective analysis of key data inputs could help determine if there are systematic issues with the estimation of those data and identify means to improve the data in the future. EPA officials noted that they have used retrospective analyses of other regulatory programs to assess the accuracy of program costs. For example, in 2002, EPA issued a retrospective cost analysis of a large number of light-duty vehicle criteria pollutant standards and mobile source fuel standards implemented between 1992 and 2001.⁶⁷ However, because EPA has not previously issued GHG emissions standards for automobiles, it would not be able to conduct these types of analyses for GHG emissions standards at this time.

⁶⁶GAO, *Reexamining Regulations: Opportunities Exist to Improve Effectiveness and Transparency of Retrospective Reviews*, GAO-07-791 (Washington, D.C.: July 16, 2007).

⁶⁷See for example “Comparison of EPA and Other Estimates of Mobile Source Rule Costs to Actual Price Changes”, J. Anderson and T. Sherwood, US EPA, published in the Society of Automotive Engineers Technical Paper Series, SAE 2002-01-1980, 2002.

With respect to the model year 2008 through 2011 light truck CAFE standards, the following retrospective analyses could be conducted by NHTSA:

- An overall analysis of the standards to determine the extent to which the new, footprint-based standards met intended goals (e.g., increases in fuel economy and reductions in fuel consumption). As the proposed model year 2012 through 2016 CAFE standards are also to be based on vehicle footprint, this analysis could help determine if the move to the footprint based standard provided the intended benefits or imposed unexpected costs.⁶⁸
- An analysis of the accuracy of key data inputs, including the baseline fleet and technology cost estimates. NHTSA has been criticized in the past for not adequately estimating these two sets of data, which provide crucial information for determining the effects of the proposed standards, and thus need to be as accurate as possible.

Although NHTSA officials we spoke with recognize the value of these analyses and hope to conduct them, they report that resource limitations have prevented them from doing so in the past and will prevent them from doing so in the near future. In addition, NHTSA is not required to do any of these analyses. A discussion of NHTSA officials' responses regarding retrospective analyses and the resource limitations that have prevented them from being conducted follows:

- *Model year 2008 through 2011 light truck standards.* NHTSA staff said that such retrospective analysis of the model year 2008 through 2011 light truck standards would be worthwhile and informative. However, according to NHTSA officials, in recent months the agency has devoted all of its dedicated CAFE staff's time to the proposed model year 2012 through 2016 CAFE rule and, as a result, has not been able to devote

⁶⁸As we discussed earlier, there is continuing controversy over the relationship between vehicle size, weight, and safety. Some experts we met with said that some manufacturers, in order to meet increased CAFE standards, may keep vehicle footprint constant while reducing overhang (the area of the car ahead of the wheelbase), which could make passengers more vulnerable in crashes. A retrospective analysis could help determine the extent to which this occurs and the potential safety implications of a footprint-based CAFE standard even assuming that footprints are not reduced.

resources to conducting a retrospective analysis.⁶⁸ In addition, given that NHTSA staff said that the agency is being asked by a majority of commenters addressing the subject to begin working on CAFE standards beyond model year 2016 as soon as possible, they may not be able to work on a retrospective analysis once the model year 2012 through 2016 standards are finalized and released. However, a number of experts we interviewed said that NHTSA should conduct such an analysis in order to provide insight into the standards and their actual effects.

- *Manufacturers' sales data.* While NHTSA told us that it would like to look back at manufacturers' actual sales as a means to assess the accuracy of the product plans that manufacturers submitted and that NHTSA used as the baseline fleet in setting model year 2008 through 2011 light truck standards, it said that it has no definitive plans for conducting this analysis in the near future. NHTSA officials cited a lack of resources in the agency for not conducting such an analysis. In addition, because 2008 sales were an anomaly—they were unusually low given the economic downturn—officials thought a study of the extent to which actual 2008 sales were in-line with the forecasted sales for 2008 that were used to set those standards would be of little value. However, an analysis of actual future years' sales against the estimated sales of the baseline fleet used in the rulemaking would be of value, as it would help validate data and potentially identify means to improve fleet forecasts in future CAFE rulemakings.
- *Cost estimates of technology.* NHTSA officials also told us that an assessment of the cost estimates of technology used in previous analyses would be valuable. However, NHTSA staff also said that such an analysis would be challenging, as it is hard to get accurate data on the actual cost of technology components. This is because these components are either sold directly to, or produced by, automobile manufacturers, meaning that there is no clear, public historical data on their sales price. However, while some experts with whom we spoke recognized the challenges in conducting such an analysis, they thought that such an assessment would provide value and recommended several different approaches for conducting this type of analysis. For example, some experts suggested that costs could be validated through a vehicle teardown program, such as the type of project EPA initiated last year, or through an analysis of sales data

⁶⁸NHTSA does, however, produce an annual Summary of Fuel Economy Performance report that provides information on CAFE standards in the previous year and the actual fuel-economy level of all manufacturers that are subject to the standards. In addition, they publish a summary of CAFE fines assessed on an annual basis.

and technology that manufacturers incorporated into recent models to comply with increased standards. While these studies could potentially impose large resource demands, they would also potentially help improve the cost of technology assumptions in future CAFE rules, helping to create standards that more accurately reflect costs and benefits.

Conclusions

Because CAFE and GHG emissions standards are closely related and automobile manufacturers will be subject to both, close collaboration between NHTSA and EPA can minimize compliance costs to the industry and ensure harmonized standards. Furthermore, regardless of how the government may set any future standards—jointly or independently—a continued partnership between the two agencies can help assure fiscal responsibility by leveraging—rather than duplicating—federal efforts and resources, including expertise and human capital costs. However, the current level of collaboration between NHTSA and EPA, which stems from the joint rulemaking process the agencies undertook at the discretion of the current administration, is not set in law or otherwise required. If NHTSA and EPA do not collaborate closely on future standards, there is a risk that the standards may not be harmonized, which would lead to increased compliance costs for manufacturers; the standards may not reflect the expertise of both agencies, such as the vehicle power train technology and environmental expertise of EPA and vehicle safety expertise of NHTSA; and the goals that the standards are attempting to accomplish may not be met. Also, the standards may not accurately reflect the best estimates of key costs and benefits, thus imposing added costs on the economy or failing to provide as large benefits to society as the standards could.

In addition, this is the first joint rulemaking conducted between these agencies, and NHTSA and EPA are under tight time frames to set the standards. However, the agencies are not documenting the processes being used. If NHTSA and EPA must collaborate on future standards, staff may spend additional time recreating these processes—ones which appear to be working effectively—and relearning how best to interface with one another's leadership structure, management processes, and research activities. As a result, the two agencies may not share their respective expertise and resources as well, potentially leading to inefficiencies, less thorough and rigorous regulatory analyses, and standards that may not be effectively harmonized or developed with similar time frames.

NHTSA has not yet conducted—nor does it have plans to conduct—a full and formal analysis of the effectiveness and outcomes of its adoption of

the footprint-based CAFE standards for light trucks. Also, it has no plans to assess the accuracy of key data inputs used to set these standards, even though it is now proposing a footprint-based approach for passenger vehicles as well. Conducting these types of analyses can help policymakers determine whether anticipated benefits and costs have been realized and identify corrections in or improvements to existing programs. NHTSA is not required to conduct such analyses and has limited staff and resources to devote to this effort. As a result, it is not clear if the new standards have met goals that NHTSA intended—such as fuel savings and improved safety outcomes—and if the move to the footprint-based standards was worthwhile. Furthermore, NHTSA does not know how well it estimated key data inputs that help determine the level at which standards are set, including technology costs; whether manufacturers used the types of technologies NHTSA expected in order to comply with new standards; and whether baseline fleets matched the vehicle mix actually sold. Consequently, agency officials cannot learn from the past and make adjustments to the process, such as seeking different data sources, to ensure that future standards are based on the most accurate data available.

Given the importance of safety in setting CAFE standards, ensuring that decision makers and the public have the most accurate information on the relationship between vehicle size, weight, and safety will be important if the standards are to be changed in the future. In addition, the data inputs that NHTSA and EPA use to help set and analyze the effects of the proposed model year 2012 through 2016 standards should be based upon the best available research and reflect a consensus among experts and stakeholders. Given the controversy among experts and the increasing availability of material substitution—an advancement in technology to reduce weight that could compensate for safety effects—new research could help to answer questions regarding the extent to which weight can be reduced without affecting safety and whether there are best practices for employing material substitution.

Finally, while other sources of technology costs were used in developing CAFE and GHG emissions standards, the 2002 NAS work on technology costs was generally viewed by a wide range of stakeholders and experts as being thorough and unbiased. Congress authorized NHTSA to contract with NAS at 5-year intervals until 2025 so that the agency would have current information available to set future standards. However, if NHTSA cannot ensure that this work is available in time to support analysis in future rulemaking, this study, and the federal money that sponsored it, will be wasted.

Recommendations for Executive Action

Based on our review, we are making five recommendations. We recommend the following to NHTSA and EPA:

- NHTSA and EPA should document the process used in this joint rulemaking to establish a roadmap for any future rulemaking efforts and facilitate future collaboration. In addition, NHTSA and EPA should publish this documentation in order to increase transparency.
- To ensure continued collaboration and an enhanced relationship in any future CAFE and GHG emissions rulemakings, NHTSA and EPA should enter into a Memorandum of Understanding with one another in which the agencies agree to continue their enhanced partnership in any future CAFE and GHG rulemakings.
- NHTSA and EPA, with input from key stakeholders, should conduct or sponsor new research on safety and its relationship to vehicle size and weight, given the controversy and lack of consensus regarding the relationship between vehicle size, weight, and safety and the emergence of new strong-but-lightweight materials among experts and stakeholders.

In addition, we are recommending the following to NHTSA:

- NHTSA should conduct and document a retrospective analysis of the model year 2008 through 2011 light truck standards, given the potential impact of CAFE standards on the automobile industry and consumers. In addition, we recommend that NHTSA identify opportunities to evaluate the accuracy of key estimates, such as technology costs, used to determine the model year 2008 through 2011 light truck standards. As EPA has experience conducting retrospective analyses of regulatory programs, NHTSA should consider involving EPA in this process.
- NHTSA should set delivery time frames for future NAS studies to ensure the availability of these studies in a time frame useful for incorporation in NHTSA's regulatory analyses.

Agency Comments and Our Evaluation

We provided a draft copy of this report to the Department of Transportation and the Environmental Protection Agency for their review. We also provided a relevant section of the report to the Energy Information Administration, and officials confirmed that information characterizing EIA's fuel price projections was accurate.

EPA provided a written response, which is reproduced in appendix III. In its response, EPA agreed with our characterization of NHTSA and EPA's

collaboration on setting CAFE and GHG emissions standards and with our recommendations. In addition, EPA provided technical comments via e-mail which we incorporated as appropriate.

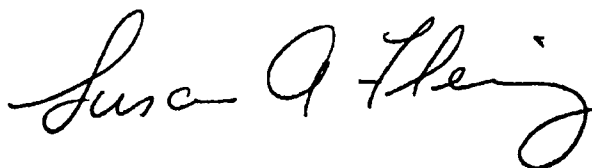
DOT provided its response by e-mail and generally agreed with the report's recommendations. NHTSA also provided technical comments, and while we incorporated a number of these comments, others offer an opportunity for additional discussion. First, NHTSA suggested that our first two recommendations—(1) that NHTSA and EPA document the process used in this joint rulemaking, and (2) that NHTSA and EPA sign a Memorandum of Understanding to continue this enhanced partnership—apply only if future rulemakings are conducted jointly. We did not make this change. Given NHTSA and EPA's successful collaboration on CAFE and GHG emissions standards, we believe continued collaboration will help ensure that federal resources and expertise are leveraged efficiently and effectively—regardless of whether future administrations continue to issue both sets of standards jointly, separately, or pursue only CAFE or GHG emissions standards.

Second, in our discussion of the impact of the appropriations ban from fiscal years 1996 through 2001 that prevented NHTSA from conducting work on CAFE issues, we noted that NHTSA lost staff with relevant expertise and did not begin to hire additional automotive engineers until summer 2009. We looked into this issue because in our 2007 report, NHTSA officials told us they needed additional staff with expertise in automotive engineering and computer modeling to assist in developing technology cost and effectiveness estimates, as well as other tasks, to prepare for future changes in CAFE standards. NHTSA commented in response to this draft that the prohibition did not prevent DOT from sustaining relevant engineering, energy, and environmental expertise, and that after 2001, NHTSA leveraged DOT's expertise. NHTSA also commented that in our current review, we did not examine broader staff capabilities within DOT. We agree that this information is important. However, we were not able to confirm the extent to which NHTSA leveraged DOT's expertise because NHTSA did not provide this information. We continue to believe that NHTSA and EPA have different expertise and resources—ones that likely cannot be replicated efficiently at both agencies but that are crucial for the development of balanced, effective standards for cars and light trucks, and therefore we did not revise the report.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Secretary of Transportation, the Administrator of the Environmental Protection Agency, the Administrator of the Energy Information Administration, and interested congressional committees. This report will also be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staffs have any questions concerning this report, please contact me at (202) 512-2834 or flemings@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions are listed in appendix IV.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Susan A. Fleming". The signature is fluid and cursive, with the first name "Susan" written in a larger, more prominent script than the last name "Fleming".

Susan Fleming
Director, Physical Infrastructure Issues

Appendix I: Objectives, Scope, and Methodology

To describe the proposed corporate average fuel economy (CAFE) and greenhouse gas (GHG) emissions standards, we analyzed documentation related to the rulemaking, such as the May 2009 Notice of Upcoming Joint Rulemaking, September 2009 Notice of Proposed Rulemaking, and associated preliminary regulatory impact analyses from both agencies. We analyzed these documents to summarize the structure of each set of standards, describing how the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) harmonized the standards and areas in which there are differences between the standards, such as certain types of flexibilities like temporary lead-time mechanisms. We also summarized related legislation that establishes CAFE fines and summarized EPA's authority under the Clean Air Act to assess fines for noncompliance with GHG standards, to describe the penalties that NHTSA and EPA will apply for noncompliance with the new standards.

To describe NHTSA's and EPA's processes for setting proposed model year 2012 through 2016 CAFE and GHG emissions standards, we reviewed and analyzed relevant rulemaking documents, such as the Notice of Proposed Rulemaking and the legislation establishing CAFE standards and EPA's authority to regulate GHG emissions, noting the types of analyses each agency was allowed to conduct under its individual legal authority. We analyzed documentation related to the analyses the agencies conducted. We also interviewed agency officials and reviewed documentation from NHTSA and EPA related to the work they conducted in setting the standards. To describe how the agencies collaborated with one another to issue the standards, we analyzed these interviews and documentation against GAO criteria for evaluating communication and coordination among federal agencies. Through interviews with officials and by reviewing research each agency developed as part of the rulemaking, we identified the expertise and resources each agency brought to bear in the development of the standards.

To evaluate the improvements made to NHTSA's regulatory impact analyses used in setting CAFE standards, we reviewed relevant documentation, including NHTSA's Preliminary Regulatory Impact Analysis on model year 2011 CAFE standards for passenger cars and light trucks and for the proposed model year 2012 through 2016 standards. We also conducted literature searches for research on fuel economy published since 2007—the year of our last report on CAFE standards. We interviewed NHTSA officials and staff at the Volpe National Transportation Systems Center, as well as automobile industry stakeholders—including domestic and international automobile

manufacturers; an association representing original equipment suppliers; vehicle technology specialists at national laboratories and academic research centers; and independent experts on vehicle technology, transportation, and modeling. We identified these experts through several approaches:

- About half of the experts we contacted had assisted us in our 2007 review of CAFE standards. Several of these experts were members of the current or 2002 National Academy of Sciences (NAS) committee, while others had been recommended by members of the NAS committee or NHTSA.
- We conducted internet searches to identify experts publishing recent research on fuel economy, GHG emissions, economic modeling, and other issues.
- We asked experts participating in our work for recommendations.

We also pursued a more in-depth analysis from stakeholders about safety and vehicle weight by reviewing the methodology of several key studies and interviewing engineers and other organizations with specific expertise in safety and vehicle design, such as the Insurance Institute for Highway Safety and experts from National Laboratories. We also interviewed officials from the Energy Information Administration (EIA) to review gasoline price projections that are used in the Volpe model. To evaluate NHTSA's processes for obtaining and validating data on automobile manufacturer product plans and cost data on fuel-saving technologies, we analyzed NHTSA documentation against GAO criteria for developing, managing, and evaluating cost estimates and for assessing data reliability. To evaluate NHTSA's processes for estimating the costs and benefits of improved vehicle fuel economy in the Volpe model, we analyzed NHTSA documentation against federal guidance for conducting regulatory and economic analyses and GAO guidance for conducting benefit-cost analyses.

To determine the steps NHTSA has taken to analyze the effects of the model year 2008 through 2011 light truck standards, we reviewed and analyzed the Energy Independence and Security Act, NHTSA's final rulemaking on the model year 2008 through 2011 CAFE standards for light trucks, and the data used to set these standards. We interviewed NHTSA officials to determine whether NHTSA has conducted analyses to assess the outcomes of these standards—for example, improvements in vehicle fuel economy and gallons of oil saved—and requested documentation of any analyses. To determine the steps NHTSA has taken to assess the

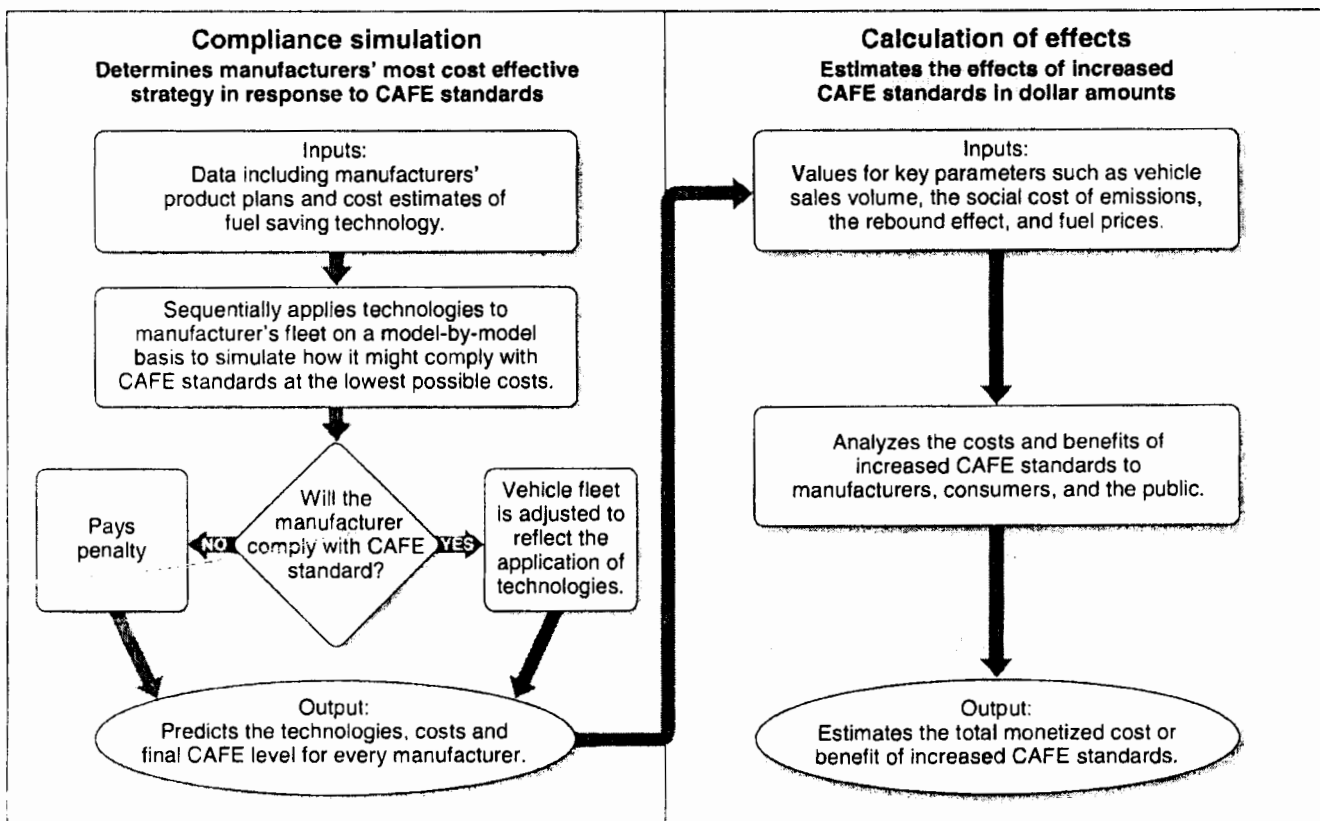
accuracy of input data and assumptions used in developing the model year 2008 through 2011 CAFE standards—particularly assumptions related to cost estimates of technology and manufacturer product plans—we interviewed NHTSA officials and requested documentation of any analyses as appropriate. For example, we assessed whether NHTSA compared data that estimated the costs of fuel-saving technology to actual cost data from 2008. We also interviewed outside experts on options NHTSA could use to conduct such an analysis and the benefits and tradeoffs of doing so. Finally, we reviewed and analyzed these interviews and documentation against GAO guidance for program evaluation.

We conducted this performance audit from June 2009 to February 2010, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: The CAFE Compliance and Effects Modeling System

As part of its regulatory impact analysis of potential CAFE standards, NHTSA uses the CAFE Compliance and Effects Modeling System (commonly known as the Volpe model) developed by the Volpe National Transportation Systems Center to estimate the following: (1) the most cost-effective strategy for automobile manufacturers to respond to proposed CAFE standards and (2) the impacts, such as reduced fuel consumption, increased vehicle prices, and reduced emissions, proposed CAFE standards will have on consumers, manufacturers, and society. For a visual description of the Volpe model's analysis, see figure 6.

Figure 6: The Volpe Model



Source: GAO interpretation based on past use by NHTSA.

Input Files Used in the Volpe
Model

The Volpe model's analysis relies on a number of data inputs, including, among other things, a list of the automobile manufacturers producing vehicles for sale in the U.S. during the period covered by a CAFE rulemaking, a list of fuel-saving technologies¹ and their estimated cost and effectiveness in reducing fuel consumption, simulated alternative CAFE scenarios (i.e., CAFE standards set at range of levels), economic inputs such as the estimated social cost of carbon dioxide emissions and the rebound effect (a phenomenon in which individuals drive more because improving a vehicle's fuel economy effectively lowers the cost per mile of operating that vehicle), and the emissions rates of various pollutants. These data are contained in several input files that are entered into the Volpe model.

The Compliance Simulation

The Volpe model's compliance simulation demonstrates how each automobile manufacturer could attempt to comply with a higher CAFE standard by adding fuel-saving technologies to its vehicle fleet until that level is achieved. Using the information provided in the scenario input file, the Volpe model applies fuel-saving technologies in order of cost-effectiveness and ease of implementation to the vehicle models forecasted in the baseline to simulate how a manufacturer could make progress toward compliance with new CAFE standards.

Definition of the Baseline
Vehicle Fleet

The compliance simulation begins with a forecast of the U.S. vehicle fleet in future model years, which represents the baseline vehicles (including estimates of the volumes and prices of individual vehicle models) manufacturers could modify with fuel-saving technologies to comply with the model year 2012 through 2016 CAFE standards. For the model year 2012 through 2016 rulemaking, the baseline vehicle forecast was developed using public model year 2008 vehicle sales data, vehicle sales forecasts from EIA, forecasts of the relative sales of cars and trucks by manufacturer and market segment from CSM-Worldwide, EPA's emission certification and fuel-economy database, vehicle and technology information from Edmunds.com, Motortrend.com, and Ward's Automotive,

¹In the proposed rule, NHTSA used 39 technology applications, such as engine turbocharging/downsizing, variable valve timing, cylinder deactivation, and engine friction reduction.

Application of Vehicle
Technologies

and to a more limited extent than in previous rulemakings, confidential business plans provided by automobile manufacturers upon request.²

Using the baseline vehicle fleet, the Volpe model then simulates how each manufacturer could apply fuel-saving technologies to each vehicle model in its fleet to comply with the model year 2012 through 2016 CAFE standards in the most cost-effective manner. Prior to this simulation, NHTSA estimated the cost, effectiveness in reducing fuel consumption, applicability in terms of vehicle subclass,³ availability by model year, learning rate,⁴ and fleet penetration⁵ of each technology considered in the compliance simulation and included this information in the technology input file. Technologies are categorized within one of five technology groups,⁶ and each technology group has a corresponding “decision tree” which displays the sequence in which NHTSA estimates a manufacturer would apply technologies to the vehicle models in its fleet. For example, a manufacturer could apply electrical power steering, improved electrical accessories, 12-volt micro-hybrid technology, a belt integrated starter generator, and a crank integrated starter generator to a subcompact car using the decision tree for the electrification/accessory technology group. Each technology is positioned along a decision tree according to its estimated incremental cost and fuel-economy improvement, taking into account technologies that have already been applied. Before applying new technologies to a vehicle, the Volpe model first carries over any technologies that were present during the previous model year. Then, proceeding along each technology group’s decision tree, the Volpe model

²In previous rules, NHTSA has relied on confidential product plans provided by manufacturers to create the baseline fleet, but it has shifted away from that approach to make the baseline data more transparent for the proposed rule.

³For the purpose of applying technologies, NHTSA distinguishes vehicles by subclass, including subcompact car, subcompact performance car, compact car, compact performance car, midsize car, midsize performance car, large car, large performance car, minivan, small SUV/pickup/van car, midsize SUV/pickup/van, and large SUV/pickup/van.

⁴Learning is a means of capturing the reduction in cost of the components and manufacturing process involved with a technology. A reduction in cost takes place when the volume of deployment of that technology increases dramatically (volume-based) or when reasons related to other factors, such as negotiated contractual agreements between suppliers and original equipment manufacturers, occur over a period of time (time-based).

⁵Fleet penetration is the percentage of a fleet that a technology can be applied to in a given model year, which is based on supply constraints and other reasons.

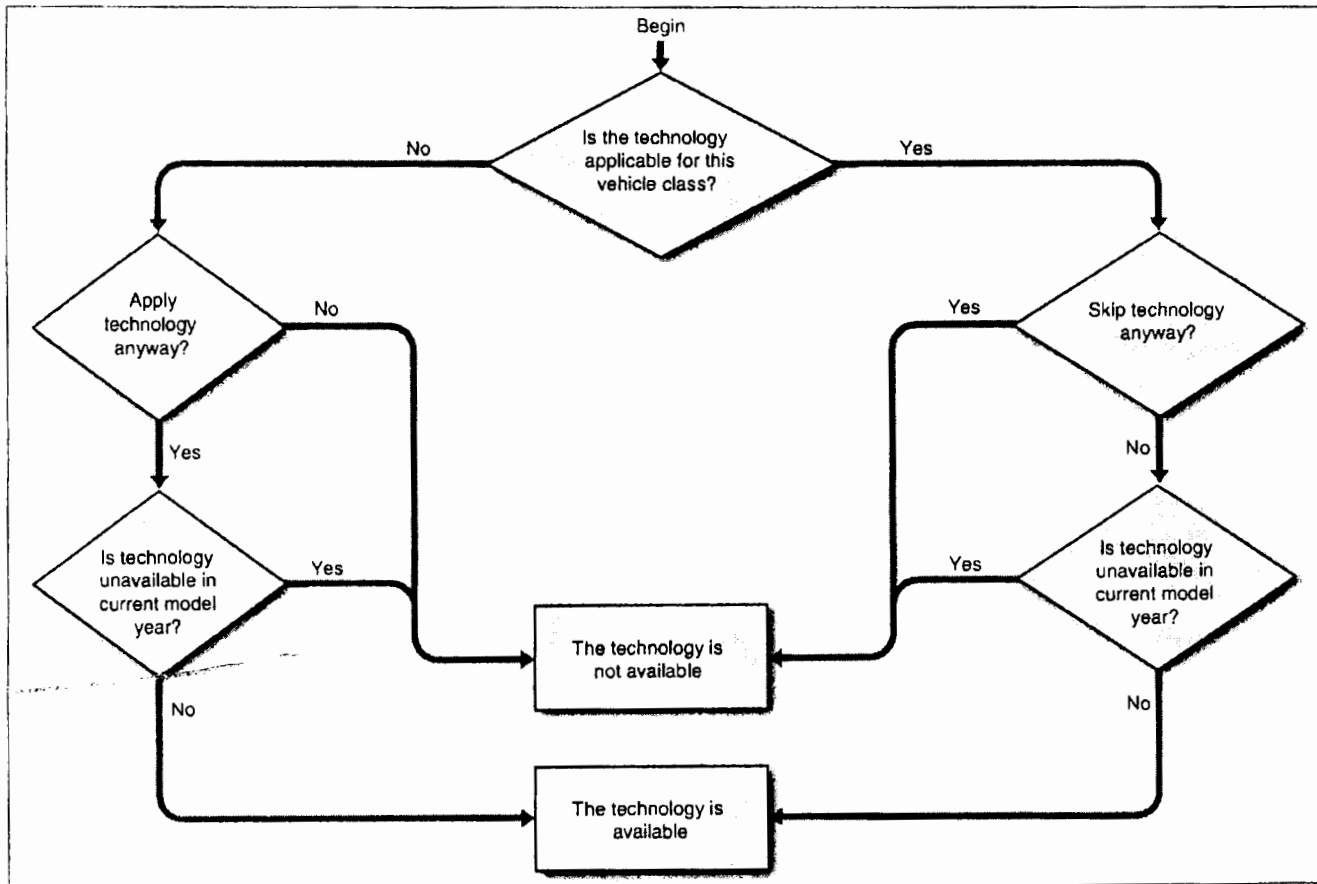
⁶The five technology groups are engine, transmission, electrical accessory, hybrid, or vehicle.

**Appendix II: The CAFE Compliance and
Effects Modeling System**

determines the applicability and availability of each technology to every vehicle model. If the phase-in limit for a particular technology has been reached and it is no longer available, the Volpe model proceeds to the estimated next-best technology.⁷ See figure 7 for a visual description of the process by which the Volpe model determines the applicability and availability of a given technology.

⁷The "next-best" methodology operates as follows: the Volpe model considers technologies within one of the five technology groups in sequential order, proceeding to the next technology if the phase-in cap has been reached for a particular technology (i.e., 85 percent penetration for turbocharged/downsized engines). The Volpe model determines whether the technology can be applied to any set of vehicles, evaluates the effective cost of doing so, and identifies the technology from each technology group that would yield the lowest effective cost.

Figure 7: The Volpe Model's Determination of Technology Applicability and Availability



Source: GAO adaptation of the Volpe model's technology applicability determination.

The model repeats this process for each technology group, and then selects the technology with the lowest effective cost—that is, the technology that provides the greatest private benefits with the lowest cost. The compliance simulation continues to apply technologies to each manufacturer's fleet using this approach until (1) the manufacturer's fleet is estimated to be brought into compliance with the CAFE standard for a given model year, (2) the manufacturer has exhausted all the technology options for its fleet, or (3) the Volpe model estimates that it would be more cost-effective for the manufacturer to pay the associated CAFE fines than to apply additional technology to its fleet. The Volpe model accounts for multiyear planning, through which a manufacturer may apply more

technology than necessary in earlier model years in order to carry those technologies forward into future model years and thereby avoid applying other more expensive technologies. When the Volpe model has brought each manufacturer's fleet to one of the three outcomes listed above, the compliance simulation loop ends.

Forecast of the New Vehicle
Fleet

The compliance simulation produces an output file that shows, for each vehicle in a manufacturer's fleet, which technologies were included in a vehicle model before the simulation was run, which technologies were skipped in favor of other technologies, and which technologies had been applied to vehicles at the simulation's end. The output file also shows the changes in vehicle weight, improvement in fuel economy, and incurred cost resulting from the technologies applied during the compliance simulation, as well as the total cost of any civil penalties incurred by each manufacturer. At this point, the Volpe model has a new fleet of vehicles with new prices, fuel types (gasoline or diesel), fuel-economy values, and curb weights to reflect how NHTSA estimates manufacturers will apply fuel-saving technologies in response to the CAFE requirements.

The Calculation of Effects

Following the compliance simulation, the Volpe model's calculation of effects component estimates the impact of the fuel-economy improvements made to vehicles to meet new CAFE standards on energy consumption, greenhouse emissions, and other factors. Using the forecasted vehicle fleet (i.e., the output of the compliance simulation), the Volpe model estimates the lifetime travel, fuel consumption, and carbon dioxide and criteria pollutant emissions⁸ resulting from the application of technologies to meet higher CAFE standards for each vehicle in the U.S. fleet over its anticipated life span. After calculating the effects for individual vehicle models, the Volpe model aggregates these effects for all the vehicles in a CAFE class produced during each model year affected by a proposed standard.

Costs, Benefits, and Effects of
More Stringent CAFE
Standards

The Volpe model measures the effects of increased CAFE standards by calculating the difference in the value of a variable (e.g., gallons of fuel consumed) under the baseline (model year 2011) CAFE standard and its value under a new CAFE standard. These effects include but are not limited to

⁸Ozone, particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide, and lead are called criteria pollutants because EPA regulates them by developing human health-based or environmentally-based criteria (science-based guidelines) for setting permissible levels.

- reductions in greenhouse gas emissions—increasing CAFE standards will reduce gasoline consumption and the amount of petroleum refined, which will reduce emissions of greenhouse gases;
- higher or lower emissions of air pollutants;
- potential increases in new vehicle prices;
- social value of fuel savings, which is the annual value of fuel savings over the entire expected lifetimes of vehicle models whose fuel economy is improved;
- economic benefits from reduced petroleum imports;
- valuing changes in environmental impacts (i.e., the Volpe model estimates changes in damage costs caused by carbon dioxide emissions); and
- social costs of added driving.

Appendix III: Comments from the Environmental Protection Agency



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 16 2010

OFFICE OF
AIR AND RADIATION

Ms. Susan Fleming
Director, Physical Infrastructure
Government Accountability Office
441 G. St., N.W.
Washington, D.C. 20548

Dear Ms. Fleming:

Thank you for the opportunity for the Environmental Protection Agency (EPA) to respond to the Government Accountability Office's (GAO) draft report "*NHTSA and EPA's Partnership for Setting Fuel Economy and GHG Emission Standards Improved Analysis and Should be Maintained*," including the recommendations included in the report.

EPA fully understands its responsibilities under the Clean Air Act to protect human health and welfare, including the responsibilities which flow from the April 2007 Supreme Court decision in *Mass. v. EPA* with respect to climate change and greenhouse gases (GHG). As discussed in the GAO report, one of the first formal actions undertaken by EPA in response to the Court's decision was the September 2009 Joint Notice of Proposed Rulemaking (NPRM) for light-duty vehicles from EPA and the National Highway Traffic Safety Administration (NHTSA). In that action, EPA proposed the federal government's first GHG standards for light-duty vehicles, and NHTSA proposed closely coordinated fuel economy standards for the same vehicles covering the same vehicle model years (2012 to 2016). This joint NPRM demonstrates the results of several months of close collaboration between EPA and NHTSA.

GAO's draft report includes a review of the collaboration between EPA and NHTSA over the past year as the two agencies worked together to develop coordinated programs which will reduce GHG emissions, improve vehicle fuel economy, provide the industry with coordinated regulatory programs which can be met by a single national vehicle fleet, result in very large oil savings and GHG reductions, and provide significant positive lifetime fuel savings which far exceed the projected increase in vehicle costs.

GAO presents four recommendations in the draft report which are directed at both EPA and NHTSA. EPA agrees with each of these recommendations, and below we respond to each recommendation.

Internet Address (URL) • <http://www.epa.gov>
Recycled/Recyclable • Printed with Vegetable Oil Based Inks on 100% Postconsumer, Process Chlorine Free Recycled Paper

**Appendix III: Comments from the
Environmental Protection Agency**

GAO recommendation 1: EPA and NHTSA should document their collaborative rule development process.

Comment: EPA agrees with this recommendation. After the completion of our current rulemaking, we will work with our colleagues at NHTSA to document the process by which we worked together for both the NPRM and the final rule in an effort to learn from what we did right and look for opportunities for improvement in future collaborations.

GAO recommendation 2: EPA and NHTSA should formalize their collaborative relationship in order to ensure cooperation on future GHG and CAFE rule development.

Comment: EPA agrees with this recommendation. Given the close relationship between vehicle CO₂ emissions and vehicle fuel economy, it is important that EPA and NHTSA work closely together in the future to ensure that the two agencies' independent regulatory authority is closely coordinated to ensure that each agency's responsibilities are met in a way that ensures a coordinated regulatory regime for the automotive industry. EPA will work with our colleagues at NHTSA to identify ways to strengthen our current collaboration for future regulatory actions, including exploring the possibility of a formal Memorandum of Understanding as suggested by GAO, or some other form of formal agreement.

GAO recommendation 3: NHTSA and EPA, with input from key stakeholders, should conduct or sponsor research on safety and its relationship to vehicle size and weight.

Comment: EPA agrees with this recommendation. EPA has a responsibility under the Clean Air Act to consider the potential impacts of vehicle emission standards, including impacts on vehicle safety. The issue of vehicle size and mass and the potential impact of future GHG standards on vehicle safety is critically important, and EPA intends to work closely with our colleagues at NHTSA to improve the scientific understanding of these issues in the context of future improvements in vehicle GHG performance and fuel economy.

GAO recommendation 4: NHTSA should conduct a retrospective analysis of the 2008-2011 CAFE rule, and NHTSA should consider involving EPA in this analysis.

Comment: EPA has performed retrospective analysis of a number of our past mobile source rulemakings (e.g., fuel standards, light-duty vehicle standards, and heavy-duty engine standards), and we have found such analysis to be instructive. To the extent our colleagues at NHTSA decide to undertake a retrospective analysis of the 2008-2011 CAFE standards, EPA will assist in any way that would be constructive.

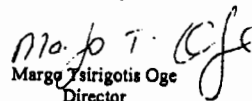
In addition to our comments discussed in this letter, EPA has also provided to GAO a number of suggested editorial changes to the draft report as a mark-up of the draft. Overall, EPA believes the draft report provides an accurate description of the collaboration between EPA and

Appendix III: Comments from the
Environmental Protection Agency

NHTSA in the development of the proposed 2012-2016 model year light-duty vehicle GHG and CAFE standards.

Once again, thank you for the opportunity to review this draft report.

Sincerely,


Marge Tsigotis Oge
Director

Office of Transportation and Air Quality

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Susan Fleming, (202) 512-2834 or flemings@gao.gov

Staff Acknowledgments

In addition to the contact above, Cathy Colwell (Assistant Director), Timothy Bober, Antoinette Capaccio, Joah Iannotta, Terence Lam, Sara Ann Moessbauer, Josh Ormond, Madhav Panwar, Justin Reed, Matthew Rosenberg, Amy Rosewarne, Frank Rusco, Crystal Wesco, and Chad Williams made key contributions to this report.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday afternoon, GAO posts on its Web site newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to www.gao.gov and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's Web site, <http://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Ralph Dawn, Managing Director, dawnr@gao.gov, (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548



Please Print on Recycled Paper

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

January 5, 2010

The Honorable Lisa Jackson
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

I am writing to request information regarding EPA's plans to examine, and as appropriate, act upon, scientific findings that indicate that triclosan and triclocarban, two extensively used antimicrobial agents, are contaminants widely present in U.S. waterways and may act as endocrine disrupting compounds and contribute to antibiotic resistance. I also believe that there may be a strong basis for these compounds, and any other similar compounds, to be examined both for rapid inclusion in the Endocrine Disruptor Screening Program as well as for potential regulation under the Safe Drinking Water Act. I request that you consider taking both actions.

As you may know, triclosan was originally introduced in the healthcare setting as a surgical scrub, but over the last decade there has been a rapid increase in the use of both triclosan, and a related compound triclocarban, in a number of consumer products including soaps, handwashes, toothpaste, shave gels, kitchenware, clothes, and toys. Over 95% of the uses of these antimicrobial agents are in consumer products that are disposed of in residential drains.¹ This is of particular concern in today's health climate in which these "antibacterial" products are extensively used by healthy individuals as a safeguard against the H1N1 and seasonal flu viruses.²

¹ Reiss, R., N. Mackay, C. Habig, and J. Griffin. 2002, *An ecological risk assessment for triclosan in lotic systems following discharge from wastewater treatment plants in the United States*, Environmental Toxicology and Chemistry 21(11): 2483-2492.

² Beyond Pesticides *The Ubiquitous Triclosan*, Aviva Glaser(beyondpesticides.org) Vol. 24, No. 3, 2004 Examples of soaps containing triclosan are: Dial® Liquid Soap; Softsoap® Antibacterial Liquid Hand Soap, CVS Antibacterial Soap, Dawn® Complete Antibacterial Dish Liquid, Ajax® Antibacterial Dish Liquid; In June 2009, FDA warned against marketing fraudulent virus

Since wastewater treatment plants are not required to remove triclosan and triclocarban from the water and these compounds are highly stable for long periods of time, it is reasonably expected that people could be further exposed to these toxic compounds by drinking contaminated water. In fact, a 2006 study by the Johns Hopkins Bloomberg School of Public Health found that about 75 percent of triclosan makes it through water treatment methods, ending up in our surface water and in municipal sludge, which is regularly applied to U.S. crop fields as a fertilizer.³ Additionally, a U.S. Geological Survey (USGS) report found that between 1999 and 2000, triclosan was found in nearly 60% of U.S. streams.⁴ This means there is a potential risk of these chemicals accumulating in both our drinking water and our foods. This risk is demonstrated by a recent study by the Centers for Disease Control and Prevention (CDC), which found triclosan in the urine of 75% of Americans, including children.⁵

Studies have also indicated that triclosan is often contaminated with dioxins and can be directly converted into dioxins when exposed to ultraviolet light.⁶ Other studies have suggested that when triclosan interacts with chlorine during the water disinfection process it forms chloroform, a common drinking water contaminant, which has been linked to cancer in high doses.⁷

Moreover, there is strong scientific evidence to suggest that triclosan and triclocarban may act as endocrine disruptors causing adverse health effects on the endocrine system when exposure occurs over sustained periods of time.⁸ Studies of triclosan have shown that it

claims: <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm166801.html>
(Jun 15, 2009)

³ Heidler J, Sapkota A, Halden RU, 2006. *Partitioning, Persistence, and Accumulation in Digested Sludge of the Topical Antiseptic Triclocarban during Wastewater Treatment*. Environmental Science and Technology, 40(11):3634-9.

⁴ Rolf U. Halden and Daniel H. Paull. 2005. *Co-Occurrence of Triclocarban and Triclosan in U.S. Water Resources*. Environmental Science and Technology, 39 (6):1420-1426.

⁵ Calafat AM, Ye X, Wong LY, Reidy JA, Needham LL. 2008. *Urinary concentrations of triclosan in the U.S. population: 2003-2004*. Environmental Health Perspectives, 116(3):303-7.

⁶ Menoutis, J. and A. I. Parisi. 2001. *Triclosan and its impurities*. Triclosan Review Series, Quantex Laboratories, Inc. <<http://www.quantexlabs.com/triclosan.htm>>

⁷ Rule KL, Ebbett VR, Vikesland PJ. 2005. *Formation of chloroform and chlorinated organics by free-chlorine-mediated oxidation of triclosan*, Environmental Science and Technology, 39(9):3176-85.

⁸ See, for example, Kumar V, Chakraborty A, Kural MR, Roy P. 2009. *Alteration of testicular steroidogenesis and histopathology of reproductive system in male rats treated with triclosan*. Reproductive Toxicology, 27(2):177-85 and Kevin M. Crofton, Katie B. Paul, Michael J.

interferes with thyroid hormone, which is vital for proper development of the brain and nervous system in fetuses, infants, and children, and regulates energy balance in adults. Triclocarban has also been shown to interfere with thyroid hormone as well as estrogens and androgens, the hormones responsible for reproductive function and a number of other physiological processes. Finally, there is some scientific evidence that suggests use of triclosan and other antimicrobial agents may increase widespread antibiotic resistance, which raises further questions regarding the safety of these products.⁹

While FDA and EPA share authority to regulate the uses of these substances, both go fairly unregulated through the consumer marketplace, despite the significant questions regarding their safety. In order to better understand EPA's position and actions involving use of triclosan and triclocarban, I ask for your prompt response to the following questions.

1. What is EPA's status in reviewing the existing data on triclosan and triclocarban? Has the EPA made any decisions regarding the need for further assessment of these chemicals?
2. Will EPA alter its regulations under the Federal Insecticide, Fungicide, and Rodenticide Act for pesticides that contain triclosan or triclocarban in light of biomonitoring studies that reveal the presence of these chemicals in 75% of the U.S. population? If so, please describe your plans, and if not, why not?
3. Given the fact that triclosan has been detected in 60% of U.S. streams, has EPA determined the impact of triclosan on wildlife, such as fish and amphibian species? If so, please provide an explanation of your findings. If not, please explain why EPA has not taken action to determine triclosan's impact.
4. As you know, in 1996, Congress passed amendments to the Safe Drinking Water Act, which contained provisions calling for the screening and testing of chemicals and pesticides for possible endocrine disrupting effects. In response, the EPA established the Endocrine Disruptor Screening Program (EDSP), which is aimed at using validated methods for the screening and testing of chemicals to identify potential endocrine disruptors and determine safe exposure levels to these chemicals.

DeVito, Joan M. Hedge. 2007. *Short-term in vivo exposure to the water contaminant triclosan: Evidence for disruption of thyroxine*. Environmental Toxicology and Pharmacology, 24:194-197.

⁹ See for example: Aiello AE, Larson EL, Levy SB. 2007, *Consumer antibacterial soaps: effective or just risky?* Clinical Infectious Diseases, 45:S137-S147.

- a. Does the EPA have plans to evaluate triclosan, triclocarban and other potentially endocrine-disrupting substances that are used in soaps, detergents and other consumer products under EDSP? If so, please describe such plans in detail, and if not, why not, since these substances could clearly end up in the nation's drinking water?
 - b. Has the EPA reviewed the scientific evidence regarding the endocrine disrupting nature of triclosan and triclocarban? If yes, what has the EPA concluded? If not, why not?
5. Is EPA concerned that simultaneous exposure to these antimicrobial agents via different pathways such as drinking water, eating food and dermal exposure might magnify the potential for adverse effects? Why or why not?
6. Has the EPA itself monitored triclosan or triclocarban in public water systems?
 - a. If yes, please provide a copy of all data collected and EPA's interpretation of these findings.
 - b. If not, does the EPA plan on including these compounds on the Candidate Contaminant List (CCL) to monitor these compounds under the Safe Drinking Water Act? If so, when will these efforts be completed, and if not, why not?
 - c. Generally speaking could the potential for increasing widespread antibiotic resistance be a safety contribution that is assessed when determining if a chemical should be placed on the CCL?
7. Is the EPA aware of any studies that have investigated the potential for triclosan to leach from cutting boards, kitchen utensils, and toys when washed? If so, what was found?
8. In 2008, an EPA Re-registration eligibility decision (RED¹⁰) required label changes to reflect the environmental hazards posed by end-use products containing triclosan. This labeling requirement states:

"Do not discharge effluent containing this product into lakes, streams, ponds, estuaries, oceans, or other waters unless in accordance with the requirements of a National Pollutant Discharge Elimination System (NPDES) permit and the

¹⁰ Re-registrations are a complete review of the human health and environmental effects of pesticides performed in order to make decisions about these pesticides' future use, The 1988 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act required these to be performed for all pesticides first registered before November 1, 1984

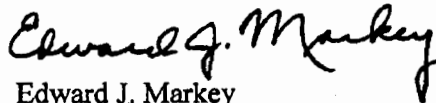
The Honorable Lisa Jackson
January 5, 2010
Page 5

permitting authorities are notified in writing prior to discharge. Do not discharge effluent containing this product to sewer systems without previously notifying the local sewage treatment plant authority. For guidance contact your State Water Board or Regional Office of the EPA."

Does EPA believe that all products that contain triclosan and have the potential to discharge into sewer systems such as antimicrobial soaps and handwashes should be labeled in this fashion? Please explain your response.

Thank you for your assistance and cooperation in this matter. I request that you provide a full and complete response within 15 working days or no later than January 26, 2010. Should you have any questions about this request, please have your staff contact Dr. Avenel Joseph or Dr. Michal Freedhoff of my staff at (202) 225-2836.

Sincerely,



Edward J. Markey
Chairman
Subcommittee on Energy and Environment

cc: The Honorable Henry A. Waxman
Chairman

The Honorable Joe Barton
Ranking Member

The Honorable Fred Upton
Ranking Member
Subcommittee on Energy and Environment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR - 5 2010

The Honorable Edward J. Markey
Chairman, Subcommittee on
Energy and Environment
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Dear Mr. Chairman:

Thank you for your letter of January 5, 2010, to EPA Administrator Lisa Jackson regarding triclosan and triclocarban. Administrator Jackson asked me to respond to the questions and concerns you have raised as my office is responsible for the regulation of pesticides.

Triclosan is an antimicrobial active ingredient that is contained in a variety of bacteriostats, fungistats, mildewstats, and deodorizer products. There are currently 20 antimicrobial registrations, which EPA regulates under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Triclocarban is not a pesticide active ingredient and there are no uses regulated by EPA under the Toxic Substances Control Act (TSCA). There are also consumer uses of both triclosan and triclocarban, such as its use in soaps and cleansers that are regulated by the Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (FFDCA). The following respond to the specific questions provided in your letter.

Question 1: What is EPA's status in reviewing the existing data on triclosan and triclocarban? Has the EPA made any decisions regarding the need for further assessment of these chemicals?

Response: In 2008, EPA completed a Reregistration Eligibility Decision (RED) for triclosan. This RED describes the conclusions of EPA's comprehensive review of the potential risks to human health and the environment resulting from the registered pesticidal uses of triclosan. The Agency determined that, with the exception of preservative use of triclosan in paints and stains, pesticides containing triclosan met the statutory safety standard in FIFRA, provided that risk mitigation measures as outlined in the RED were implemented, confirmatory data gaps were addressed, and label amendments were incorporated as presented in the RED document. Subsequent to the issuance of the RED, the registrant of triclosan products for use in paints and stains voluntarily requested cancellation of the registration of products for these uses.

In conducting the review for the RED, EPA considered all available data on triclosan, including data on endocrine effects, developmental and reproductive toxicity, chronic toxicity, and carcinogenicity. The 2008 EPA assessment relied in part on the 2003-2004 data available from the National Health and Nutrition Examination Survey (NHANES) measurements of urinary concentrations of triclosan in the U.S. population. Therefore, the 2008 EPA assessment

is inclusive of all triclosan-related exposures (*i.e.*, EPA and FDA regulated uses). EPA is updating its 2008 assessment of triclosan exposure using the newly released 2005-2006 NHANES urinary monitoring results. Once completed, EPA will provide its revised assessment in the public docket, and revisit its regulatory decision, if the science supports a change.

The 2008 RED considered new research data on the thyroid effects of triclosan in laboratory animals made available through the EPA's Office of Research and Development (ORD). Since the 2008 assessment, additional data on effects of triclosan on estrogen have also been made available from ORD. As discussed in the response to Question 4b, the ORD studies on the thyroid and estrogen effects led EPA to determine that additional research on the potential health consequences of endocrine effects of triclosan is warranted. This research is underway and will help characterize the human relevance and potential risk of the results observed from initial laboratory animal studies. The Agency will pay close attention to this ongoing research and will amend the regulatory decision if the science supports such a change. Also, the Agency has previously indicated that because of the amount of research being planned and currently in progress, it will undertake another comprehensive review of triclosan beginning in 2013.

With respect to triclocarban, EPA's Office of Pollution Prevention and Toxics (OPPT) in April of 2009 published its assessment of triclocarban. This assessment presented the environmental and human hazard characterization for triclocarban based on the available data. During the evaluation process, OPPT determined that there are no uses under TSCA.

Question 2: Will EPA need to alter its regulations under the Federal Insecticide, Fungicide, and Rodenticide Act for pesticides that contain triclosan and triclocarban in light of biomonitoring studies that reveal the presence of these chemicals in 75% of the U.S. population? If so, please describe your plans, and if not, why not?

Response: As noted in the 2008 RED document for triclosan, the human health assessment took into account the exposures received by the general US population from all sources, as reflected by the 2003-04 NHANES data. These sources included the use of triclosan as a preservative in paint and stains, which EPA determined was not to be eligible for reregistration and for which the registrant subsequently requested a voluntary cancellation of their products' registrations. The Agency determined that the other registered uses of triclosan were eligible for reregistration, provided that risk mitigation measures as outlined in the RED were implemented, confirmatory data gaps were addressed, and label amendments were incorporated as presented in the RED document. As noted in the response to Question 1, EPA is currently analyzing the NHANES 2005-06 results for triclosan and will revise its assessment based on these newer data. As also noted in response to Question 1, EPA plans to reexamine the potential risks to human health in light of the new and planned research on the effects of triclosan on the endocrine system.

Question 3: Given the fact that triclosan has been detected in 60% of U.S. streams, has EPA determined the impact of triclosan on wildlife, such as fish and amphibian species? If so, please provide an explanation of your findings. If not, please explain why EPA has not taken action to determine triclosan's impact.

Response: The Agency conducted a comprehensive assessment of available data on any ecological hazard and risk, which is summarized in the 2008 RED on triclosan. Based on

available information, EPA concluded that, for antimicrobial pesticidal uses, estimated environmental concentrations of triclosan do not exceed levels of concern for fish or aquatic animals. However, based on monitoring data, there is potential for toxicity to aquatic plants. The Agency has identified additional studies that it will require triclosan registrants to perform to better characterize acute and chronic ecological risks.

It should be noted that EPA required pesticide registrants to add labeling statements indicating that triclosan is toxic to fish and other aquatic animals, and that any discharges into waterways need to conform to the requirements of the National Pollutant Discharge Elimination System (NPDES).

Question 4: As you know, in 1996, Congress passed amendments to the Safe Drinking Water Act, which contained provisions calling for the screening and testing of chemicals and pesticides for possible endocrine disrupting effects. In response, the EPA established the Endocrine Disruptor Screening Program (EDSP), which is aimed at using validated methods for the screening and testing of chemicals to identify potential endocrine disruptors and determine safe exposure levels to these chemicals.

(a) Does the EPA have plans to evaluate triclosan, triclocarban, and other potentially endocrine-disrupting substances that are used in soaps, detergents, and other consumer products under EDSP? If so, please describe such plans in detail, and if not, why not, since these substances could clearly end up in the nation's drinking water?

Response (a): Under section 408(p) of the FFDCA, EPA was directed to develop "a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as the Administrator may designate." Since triclosan is a pesticide chemical, EPA will review it under the EDSP program.

The Agency notes that some data are already available to characterize the endocrine disrupting potential of triclosan. EPA's Office of Research and Development has conducted at least six of the eleven EDSP Tier I screening assays with triclosan. Based on these screening studies, EPA has additional work underway to further characterize the early results of these studies. EPA will use the results of the ongoing ORD studies (discussed in the response to Question 4(b)), along with other research from the public literature, in its comprehensive reassessment of triclosan.

(b) Has the EPA reviewed the scientific literature regarding the endocrine disrupting nature of triclosan and triclocarban? If yes, what has the EPA concluded? If not, why not?

Response (b): EPA has reviewed the existing scientific evidence regarding the endocrine disrupting effects of triclosan and discussed these findings in the RED that was issued in 2008. From review of the existing evidence, EPA concluded that there is evidence that triclosan disrupts thyroid hormone levels in laboratory animals. Additionally, there are initial EPA research findings that show triclosan has the potential to affect the estrogen system in rats. EPA analyzed the available data on thyroid hormone effects of triclosan and concluded that there were

no risks of concern from the exposures considered in the 2008 RED document. Additional work, however, is needed to better understand the initial observations of the effects of triclosan on estrogen observed in the Tier 1 assays.

Because triclosan has already been evaluated in many of the Tier 1 EDSP screening level assays, the focus of additional work should be on more definitive higher levels of testing rather than further screening. EPA has several planned studies designed to aid both EPA and FDA in better characterizing these endocrine related effects, including toxicological effects, human relevance, and the doses at which they occur to determine if levels of human exposure are safe or not. EPA also has ongoing additional studies to reaffirm its conclusions regarding thyroid effects. The Agency will pay close attention to this ongoing research and will amend the regulatory decision if the science supports such a change.

Unlike triclosan, there are no published data showing any interference with thyroid hormones by triclocarban. In fact, unpublished research data from EPA did not find any effects on the thyroid up to very high doses (1 gram/kg/day) of triclocarban. In the published literature, triclocarban was reported to have effects on testosterone in both *in vitro* and *in vivo* studies. ORD has a number of ongoing studies in *in vitro* and *in vivo* (both ecological and mammalian tests) systems to better characterize the endocrine effects triclocarban.

Question 5: Is EPA concerned that simultaneous exposure to these antimicrobial agents via different pathways such as drinking water, eating food and dermal exposure might magnify the potential for adverse effects? Why or why not?

Response: In the case of triclosan, the 2008 assessment used the 2003-04 NHANES biomonitoring data which reflect the body burden from all different sources and routes of exposure. Additionally, the assessment included separate estimates of dermal and inhalation routes of exposure for products that might be used by only a small percentage of the population. Therefore, all pathways and routes of exposure were thoroughly assessed.

With respect to risk posed by multiple chemicals, the FFDCA requires EPA to consider cumulative exposure to pesticides and other substances that share a common mechanism of toxicity. With respect to exposure to both triclosan and triclocarban, there are no available data to indicate that triclosan and triclocarban share a common mechanism of toxicity or that simultaneous exposure to triclosan and triclocarban would pose an increased risk compared to separate exposures. Thus, EPA has not concluded at this time that simultaneous exposure to triclosan and triclocarban would magnify any of the adverse effects observed in experimental studies conducted so far with these two chemicals. As stated above, additional research is needed to better characterize the effects of these individual chemicals.

Question 6: Has the EPA itself monitored triclosan or triclocarban in public water systems?

(a) If yes, please provide a copy of all data collected and EPA's interpretation of these findings.

Response (a): While EPA has itself not monitored triclosan or triclocarban in public water systems, it has obtained publicly available monitoring data on the presence of triclosan in drinking water. EPA used these data to conduct a human health drinking water risk assessment and found no human health risk concern for triclosan in drinking water.

(b) If not, does the EPA plan on including these compounds on the Candidate Contaminant List (CCL) to monitor these compounds under the Safe Drinking Water Act? If so, when will these efforts be completed, and if not, why not?

Response (b): EPA evaluated triclosan and triclocarban for inclusion on the third contaminant candidate list (CCL3). However, EPA did not list these compounds because the limited available data showed that in comparison to other contaminants under consideration, triclosan and triclocarban were not as likely to be present in drinking water at levels that may require regulation.

The CCL 3 was published on October 8, 2009 (74 FR 51850) and includes contaminants that are currently unregulated in drinking water, that are known or anticipated to occur in public water systems, and which may require regulation under the Safe Drinking Water Act. EPA developed the CCL 3 using a multi-step process recommended by the National Academies of Science and the National Drinking Water Advisory Council. EPA considered the best available occurrence and health effects data to evaluate a universe of approximately 7,500 contaminants, from which EPA identified the list of 116 contaminants that present the greatest public health concern in drinking water. Triclosan and triclocarban were included in the universe of contaminants evaluated. However, EPA determined that these contaminants did not present as great a public health concern in drinking water as the contaminants that were selected for the CCL 3 list. EPA evaluated occurrence data in ambient water for triclosan from USGS studies and found the highest concentrations of triclosan in ambient water do not approach levels of health concern derived from the health effects data used in CCL 3. Other studies have presented data from monitoring of wastewater influent and effluent concentrations of triclosan and triclocarban. These higher concentration levels also do not approach levels of health concern. EPA will continue to evaluate unregulated contaminants including triclosan and triclocarban for future CCLs and will utilize any new data that become available. The next CCL is expected by 2014.

The Safe Drinking Water Act provides authority for EPA to require public water systems to monitor for up to 30 contaminants every 5 years under the Unregulated Contaminant Monitoring Rules (UCMR). EPA did not include triclosan or triclorban on the first two UCMRs. EPA is currently developing its third UCMR and is focusing efforts on the CCL 3 contaminants. EPA expects to issue the UCMR 3 in 2012.

(c) Generally speaking, could the potential for increased widespread antibiotic resistance be a safety contribution that is assessed when determining if a chemical should be placed on the CCL?

Response (c): EPA did not consider antibiotic resistance as a factor when evaluating whether to list contaminants on the CCL 3. EPA relied on quantitative occurrence and health effects data to evaluate contaminants for the CCL 3. More research is needed to assess and identify those contaminants that would have the greatest potential for increased widespread antibiotic resistance. More research would also be needed to develop methodologies for how this type of data could be used to modify the CCL process to allow for evaluation and comparison of health effects data amongst contaminants.

Question 7: Is the EPA aware of any studies that have investigated the potential for triclosan to leach from cutting boards, kitchen utensils, and toys when washed? If so, what was found?

Response: In the RED document for triclosan, EPA concluded that human exposure resulting from the use of triclosan in cutting boards, kitchen utensils, toys, and other products did not pose unacceptable risks to human health, including risks to infants and children. Standard methods developed by the Food and Drug Administration were used to estimate the potential for triclosan to leach from the materials into which triclosan is incorporated. EPA also estimated dietary exposure and risk from triclosan used in adhesives, pulp and paper, ice-making equipment, countertops, and cutting boards. Exposures and risks were assessed for both adults and children. The results showed that for both adults and children, risks were below the Agency's level of concern for exposure to triclosan.

Question 8: In 2008, an EPA Reregistration Eligibility Decision (RED) required label changes to reflect the environmental hazards posed by end-use products containing triclosan. This labeling requirement states:

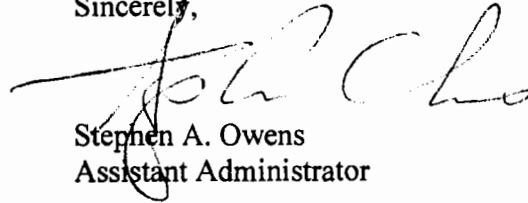
"Do not discharge effluent containing this product into lakes, streams, ponds, estuaries, oceans, or other waters unless in accordance with the requirements of a National Pollutant Discharge Elimination System (NPDES) permit and the permitting authorities are notified in writing prior to discharge. Do not discharge effluent containing this product to sewer systems without previously notifying the local sewage treatment plant authority. For guidance contact your State Water Board or Regional Office of the EPA."

Does EPA believe that all products that contain triclosan and have the potential to discharge into sewer systems such as antimicrobial soaps and handwashes should be labeled in this fashion? Please explain your response.

Response: The Clean Water Act (CWA) prohibits the discharge of a "pollutant" from a "point source" into a "water of the United States" unless the discharge is authorized under a permit issued under the National Pollutant Discharge Elimination System (NPDES). As part of its review of pesticidal uses of triclosan during the reregistration process, EPA determined that triclosan pesticides are used in a manner that could result in the discharge of a pollutant from a point source to a water of the United States. The specific products for which the Agency required the addition of a label statement concerning NPDES permitting involve the use of triclosan in the manufacture of pulp and paper products or as a material preservative in manufacturing settings (e.g., the incorporation of triclosan in finished textiles and plastic products). EPA determined that there was potential in these settings for manufacturing effluents regulated under the CWA to contain triclosan. Accordingly, EPA determined that triclosan pesticides should bear a statement advising users of their obligations under the CWA.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Ms. Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen A. Owens", written over the printed name and title.

Stephen A. Owens
Assistant Administrator

AL-09-00-1985

Congress of the United States
Washington, DC 20515

February 9, 2009

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Jackson:

Congratulations on your recent appointment as the EPA Administrator. We look forward to a productive working relationship with you.

We are writing to request that you appoint Dr. David Cash to serve as the EPA Region 1 Regional Administrator. At this time of unprecedented opportunity to enhance the scientific integrity of EPA, to better protect our air, water and public health, to more faithfully uphold the laws passed by Congress, and to address the unmet challenges of climate change, we believe Dr. Cash would be an outstanding choice to lead the Region 1 office.


Dr. Cash has an extensive background in both management of environment and energy agencies and science policy that would provide the leadership that the New England region critically needs now. He has a successful track record of forging results-oriented collaborations with state, local and federal partners and environmental, community and business interests. He will rejuvenate partnerships between EPA and the New England states, cities and towns, something that has not been fully realized, resulting in missed opportunities for reaching shared goals. Creating innovative policies that seek strong environmental protection while spurring robust economic development has been a focus of Dr. Cash's work – a focus that, based on your testimony at your confirmation hearing, will be central to EPA's new mission.


We are at a time of enormous change, and enormous challenge and opportunity. We are confident that with his character, skills and experience in government, Dr. Cash would be an outstanding asset to EPA as it meets these challenges and seizes these opportunities.

We appreciate your consideration of Dr. Cash for this important position.

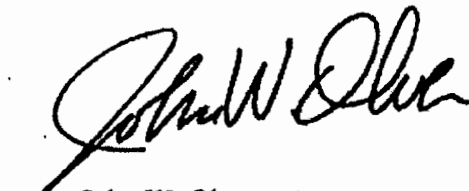
Sincerely,


Edward J. Markey
Member of Congress

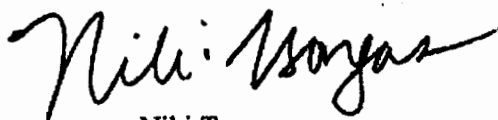

Barney Frank
Member of Congress




James P. McGovern
Member of Congress



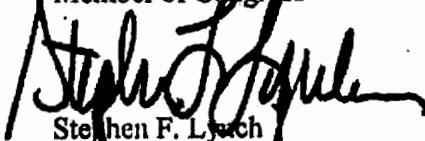
John W. Olver
Member of Congress



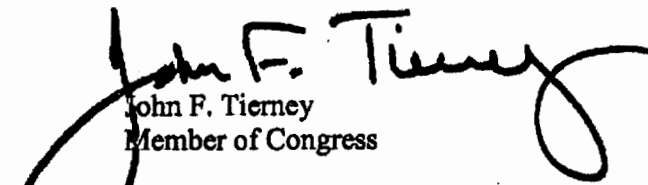
Niki Tsongas
Member of Congress



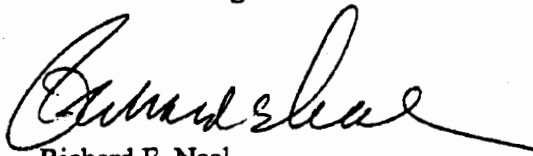
Michael E. Capuano
Member of Congress



Stephen F. Lynch
Member of Congress



John F. Tierney
Member of Congress



Richard E. Neal
Member of Congress

AL-09-001-8672

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

Majority (202) 225 2927
Minority (202) 225 3641

December 8, 2009

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Jackson:

As you know, an article in today's New York Times¹ indicated that "more than 20 percent of the nation's water treatment systems have violated key provisions of the Safe Drinking Water Act (SDWA)." Moreover, the article describes a culture at the EPA that discourages enforcement actions from being pursued by staff, which results in repeated and persistent violations that endanger public health and safety.

The article describes numerous failures of the enforcement of SDWA in the past decade:

- Since 2004, more than 49 million people have been provided with drinking water that has contained illegal amounts of toxic chemicals such as arsenic, radioactive materials or bacteria.
- Fewer than 6 percent of the violators known to have broken the law were ever subjected to penalties by either federal or state drinking water regulators.
- In some cases, drinking water violations were allowed to continue for years.
- Current and former EPA officials described unsuccessful efforts to take enforcement measures against drinking water violators, only to be faced with internal resistance by other EPA officials that prevented these actions to be taken.

¹ See *Millions in U.S. Drink Dirty Water, Records Show*, New York Times (December 8, 2009) <http://www.nytimes.com/2009/12/08/business/energy-environment/08water.html?hp=&adxnnl=1&adxnnlx=1260288050-x33mOROMvErnozW3PhYqkcA>

- State regulators often respond to violations with technical or other aid in order to assist the drinking water facility to come into compliance with the law, but in many cases, the facilities continue to be in violation of the standards even after such assistance is provided.

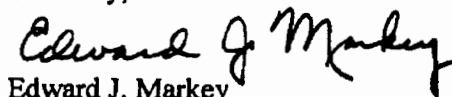
This record, quite simply, is unacceptable. I was pleased to learn that today, you announced a new enforcement plan for SDWA that focuses attention on the drinking water systems with the most problematic or repeated violations, and I look forward to reviewing it. While it is clear that many of the problems detailed in the article were created and allowed to grow by the previous Administration, I am concerned especially by the views expressed by a mid-level EPA official in the article who stated that "the same people who told us to ignore Safe Drinking Water Act violations are still running the divisions. There's no accountability, and so nothing's going to change."

As the Chairman of the House Energy and Commerce Committee's Subcommittee on Energy and Environment, which has jurisdiction over SDWA, I ask that you respond to the following questions by December 18, 2009:

1. How does EPA intend to address the internal cultural challenges described by current and former EPA officials who cite systemic efforts to discourage the pursuit of SDWA enforcement within the Agency?
2. How does EPA oversee State regulators' efforts to enforce SDWA violations? Please fully describe the manner in which EPA ensures that these efforts, whether they take place through enforcement actions or informal technical assistance, actually result in the drinking water utility remedying the violation.
3. How should a member of the public expect to be made aware of a violation that has resulted in toxic contaminants or bacteria in their drinking water? Does EPA ensure that this is occurring as it is supposed to?
4. Do you believe that the public should have the right to be made immediately aware of all violations, as mandated by SDWA section 1414(c)(2)(C), that could adversely impact their health if they continue to drink the water in question? Why or why not?

Thank you for your prompt attention to this matter. If you have questions or concerns regarding this letter, please have your staff contact Dr. Michal Freedhoff on my staff at (202) 225-2836.

Sincerely,



Edward J. Markey

Chairman

Subcommittee on Energy and Environment

cc: The Honorable Fred Upton
Ranking Member
Subcommittee on Energy and Environment

AL-12-001-4398



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 24 2012

THE ADMINISTRATOR

The Honorable Ed Markey
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Markey:

I am pleased to renew the charter of the Governmental Advisory Committee in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Governmental Advisory Committee is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The committee will be in effect for two years from the date the charter is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina J. Moody in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, which appears to read "Lisa P. Jackson", is written over a horizontal line.

Lisa P. Jackson

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

GOVERNMENTAL ADVISORY COMMITTEE TO THE UNITED STATES REPRESENTATIVE TO THE NORTH AMERICAN COMMISSION FOR ENVIRONMENTAL COOPERATION

1. **Committee's Official Designation (Title):**

Governmental Advisory Committee to the United States Representative to the North American Commission for Environmental Cooperation

2. **Authority:**

This charter renews the Governmental Advisory Committee (GAC) to the United States Representative to the Council of the Commission for Environmental Cooperation (CEC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The GAC is in the public interest and advises the U.S. Representative on implementation and elaboration of the North American Agreement on Environmental Cooperation (NAAEC). Establishment of the committee is authorized under article 18 of the NAAEC and by the North American Free Trade Agreement Implementation Act, P.L. 103-182, which authorizes U.S. participation in the CEC. Federal government responsibilities relating to the committee are set forth in Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation."

3. **Objectives and Scope of Activities:**

The GAC will provide advice, information and recommendations on specific governmental issues. The GAC will evaluate a broad range of environment-related strategic, scientific, technological, regulatory and economic issues to be addressed in implementation and elaboration of the NAAEC.

4. **Description of Committee's Duties:**

The duties of the GAC are solely to provide advice to EPA.

5. **Official(s) to Whom the Committee Reports:**

The GAC will provide advice and recommendations and report to the Environmental Protection Agency (EPA) Administrator, who serves as the United States Representative to the Council of the CEC under the authority of Executive Order 12915.

6. **Agency Responsible for Providing the Necessary Support:**

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Federal Advisory Committee Management and Outreach, within the Office of the Administrator.

7. **Estimated Annual Operating Costs and Work Years:**

The estimated annual operating cost of GAC is \$166,000 which includes 0.7 person-years of support.

8. **Designated Federal Officer:**

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. **Estimated Number and Frequency of Meetings:**

The GAC expects to meet approximately three (3) times a year. Meetings may occur approximately once every four (4) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate. A full-time or permanent part-time employee of EPA will be appointed as the DFO.

As required by FACA, the GAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of Section 552b of Title 5, U.S.C. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the GAC.

10. **Duration and Termination:**

This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed in accordance with Section 14 of FACA.

11. **Member Composition:**

The GAC will be composed of approximately twelve (12) members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from State, local and tribal governments.

12. Subgroups:

EPA, or the GAC with EPA approval, may form GAC subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the GAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the U.S. Representative to the Council of the CEC.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

August 10, 2012

Agency Approval Date

AUG 24 2012

Date Filed with Congress



**THE SELECT COMMITTEE ON
ENERGY INDEPENDENCE AND GLOBAL WARMING**

Dear Administrator Johnson:

Following your appearance in front of the Select Committee on Energy Independence and Global Warming, members of the committee submitted additional questions for your attention. I have attached the document with those questions to this email. Please respond at your earliest convenience, or within 2 weeks. Responses may be submitted in electronic form, at aliya.brodsky@mail.house.gov. Please call with any questions or concerns.

Thank you,
Ali Brodsky

Ali Brodsky
Chief Clerk
Select Committee on Energy Independence and Global Warming
(202)225-4012
Aliya.Brodsky@mail.house.gov

- 1) If you were to include all of the possible stationary sources of GHG under a new ruling, what additional manpower and budget would EPA need to enforce such an action? Would these entities be in any way prepared to be regulated under such a program?
- 2) Did the Supreme Court decision require the EPA to take action by a date certain?
- 3) Does the EPA have any authority to assess the safety of automobiles as CAFÉ standards increase?
- 4) Do you believe that the EPA's regulations on greenhouse gas emissions must be mandatory or could it be voluntary?
- 5) Just out of curiosity, the Clinton Administration didn't regulate GHG emissions under the CAA, despite the Cannon memo saying it had the authority to, did it?
- 6) What is the Bush Administration's greenhouse gas intensity goal?
- 7) As a result of the President's Executive Order, what is the general nature of the regulations that are contemplated both on the alt fuels side and the fuel economy side? What will the process be?
- 8) Can you tell us a little about programs that are already working on a voluntary basis to help curb energy use and greenhouse gas emissions, such as the Energy Star programs?
- 9) How do you respond to reports that less energy intensive machines, such as washers and dryers, can prove to use more energy? (for example, with inadequate wash cycles)

- 10) Any new regulations regarding GHG emissions will need to take into account a broad range of issues. How long would the development of regulations, comparably complicated, normally take? Would you agree that the significant lasting impact of a new GHG regulation warrants a timeline that is sufficiently long enough, particularly due to the intricate nature of this regulation?
- 11) Does the dramatic increase in voluntary GHG reductions by states and private corporations impact the necessity of a broad federal mandate? Has the EPA conducted a comprehensive study on the lasting impacts of the various programs private companies are voluntarily participating in?
- 12) What is your reaction to Secretary Bremby's denial of Sunflower's permit to construct a new power plant?



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 28 2008

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Edward J. Markey
Chairman
Select Committee on Energy Independence
and Global Warming
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the opportunity to respond to questions for the record, which we received on August 14, 2008, that followed the March 13, 2008 hearing before the Select Committee on Energy Independence and Global Warming. I hope this information will be useful to you and the members of the Committee.

If you have any further questions, please contact me or your staff may contact Cheryl Mackay in my office at 202-564-2023.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Bliley", is written over the word "Sincerely,".

Christopher P. Bliley
Associate Administrator

Enclosure

cc: Hon. F. James Sensenbrenner, Jr.
Ranking Member

Response to Questions for the Record
Hearing Before the Select Committee on Energy Independence and Global Warming
March 13, 2008
Administrator Stephen L. Johnson

1. If you were to include all of the possible stationary sources of GHG under a new ruling, what additional manpower and budget would EPA need to enforce such an action? Would these entities be in any way prepared to be regulated under such a program?

The structure and design of a GHG control program can have a significant effect on the agency resources necessary to implement it. Therefore, it is difficult to answer your question precisely. However, EPA did analyze the agency resources necessary to implement the version of S. 2191 ("America's Climate and Security Act") that was reported out of the full Senate Environment and Public Works Committee on December 5, 2007. That analysis gives a general indication of the resources necessary to implement a program of this scale. In the analysis, we assumed that 1) "Under Title I, affected facilities would report greenhouse gas (GHG) emissions directly to EPA, similar to the current Acid Rain Program"; 2) "EPA would conduct all monitoring and verification of GHG emission reports and GHG offset reports, similar to the current Acid Rain Program"; and 3) "Resources and administrative costs of the provisions in S. 2191 not directly delegated to the Administrator (e.g., the Climate Change Credit Corporation, the Carbon Market Efficiency Board, the energy efficiency standards, etc.) are not included in the resource estimate."

Based on our analysis, we estimated that EPA needs approximately 300-400 full-time equivalent employees (FTE) to implement S. 2191. Given the difficulty of predicting the extent of ongoing activities in the context of legislation like this, this preliminary estimate does not distinguish what portion of these FTE might be existing or new staff. The FTE mix would be similar to our current workforce—environmental specialists, engineers, and analysts.

2. Did the Supreme Court decision require the EPA to take action by a date certain?

No.

3. Does the EPA have any authority to assess the safety of automobiles as CAFE standards increase?

The Department of Transportation (National Highway Traffic Safety Administration) is charged by Congress under the Energy Policy and Conservation Act (as amended) with establishing CAFE standards, and can consider vehicle safety when setting those standards.

For emission standards EPA promulgates under Title II of the Clean Air Act, EPA has consistently taken safety into account in determining the stringency and timing of the standards we propose. In most cases, the Act specifically requires that EPA consider safety (along with other factors) in establishing emission standards: Section 202(a)(3)(i) for heavy duty vehicles and engines; Section 202(i) for the study leading to the Tier 2 light-duty vehicle and truck program; and Section 213(a)(3) for nonroad engines. EPA likewise may, and does, consider safety factors in promulgating standards under section 202(a)(1) of the Act. NRDC v. EPA, 655 F. 2d 318, 336 n. 31 (D.C. Cir. 1981).

For EPA rules where new technologies or technological approaches have raised specific safety concerns, EPA has initiated comprehensive studies and test programs to address the issues involved. For example, in support of the onboard vapor recovery rule, we put significant resources into a multi-year testing program to investigate concerns that had been raised about potential fire hazards. This work, done in consultation with the Department of Transportation (National Highway Traffic Safety Administration), confirmed that the safety concerns were not warranted. More recently, in response to concerns that introducing catalytic converters to small nonroad engines (like lawnmowers) could create fire risks, EPA led a test program in consultation with the Consumer Product Safety Commission. Over a period of about 2 years and with several hundred thousand dollars of investment, we tested a variety of engines equipped with catalytic converters, and released a comprehensive study showing that the new technologies could be effectively incorporated with no appreciable increase in fire risk. In general, in future EPA regulations, including any GHG emission regulations, addressing safety concerns will again be a key consideration for EPA.

4. Do you believe that the EPA's regulations on greenhouse gas emissions must be mandatory or could it be voluntary?

EPA is evaluating its options for addressing greenhouse gas emissions. The Advanced Notice of Proposed Rulemaking (ANPR) published on July 30, 2008, is an important part of that evaluation.

5. Just out of curiosity, the Clinton Administration didn't regulate GHG emissions under the CAA, despite the Cannon memo saying it had the authority to, did it?

That is correct.

6. What is the Bush Administration's greenhouse gas intensity goal?

The Administration believes that energy security and climate change are two of the important challenges of our time. In 2002, President Bush made a commitment to reduce the nation's greenhouse gas intensity by 18% by 2012. Since then, from 2002 to 2006, U.S. greenhouse gas intensity (i.e., total U.S. emissions divided by U.S. gross domestic product) has declined by 10.3% (EPA, April 2008, "Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2006"; and Department of Commerce's Bureau of Economic Analysis). The guiding principle of this effort is clear: we must lead the world to produce fewer greenhouse gas emissions, and we must do it in a way that does not undermine economic growth or prevent nations from delivering greater prosperity for their people.

Since 2001, the Administration has spent almost \$45 billion on climate science, technology development, incentives, and international assistance. In May of 2007 President Bush launched an initiative to convene representatives of the world's major economies—the largest users of energy and largest producers of greenhouse gas emissions, from both developed and developing nations—to discuss how to strengthen the international approach to the urgent challenges of energy security and climate change. The first meeting was held in September 2007 in Washington, D.C. Recently, leaders from the world's major economies met on the sidelines of the G8 meeting to advance shared objectives of reducing greenhouse gas emissions, contribute to ongoing negotiations under the UN Framework Convention on Climate Change (UNFCCC), and identify actions to be taken immediately.

7. As a result of the President's Executive Order, what is the general nature of the regulations that are contemplated both on the alt fuels side and the fuel economy side? What will the process be?

Last year, in response to the Supreme Court's decision in Massachusetts v. EPA and the President's directive, and consistent with Executive Order 13432, EPA began work with DOE, USDA, and DOT to develop new regulations that would reduce GHG emissions from motor vehicles and their fuels. This effort took as its reference point the President's legislative "Twenty-in-Ten Plan" which had not advanced in Congress. EPA had worked closely with the Department of Transportation and other federal agencies to develop GHG rules for light-duty vehicles and motor vehicle fuels under the Clean Air Act during 2007, but did not propose these rules. A major factor contributing to the decision not to propose the rules then under development was Congress' approval and the President's signature into law of EISA on December 19, 2007, which responded to his "Twenty-in-Ten" challenge. EPA also did substantial work with regard to using its existing authority under the Clean Air Act to develop fuel standards to reduce the greenhouse gas emissions associated with fuel use. EISA amended Clean Air Act provisions requiring a Renewable Fuels Standard (RFS) that were first established in the Energy Policy Act of 2005 (EPA 2005). Separately, EISA amended existing Energy Policy and Conservation Act (EPCA) provisions with regard to the Department of Transportation's authority to set Corporate Average Fuel Economy (CAFE) Standards.

Much of EPA's work under the Executive Order on fuel regulation was supplanted by the new law's RFS provisions, which differ in significant ways from the fuels program EPA was developing. EPA is now undertaking the analysis and rule development necessary to implement the new RFS provisions. Meanwhile, EPA's RFS program under the authority of EPA 2005, including the amended target for 2008 that was included in the EISA, is fully operational.

With regard to motor vehicle regulations, EISA substantially altered DOT's authority to set vehicle mileage standards. DOT has issued a proposed rule setting more stringent CAFE standards and has conducted a public comment period on its proposal. Most recently, EPA issued an Advanced Notice of Proposed Rulemaking (ANPR) requesting comment on regulating greenhouse gases under the Clean Air Act. This ANPR presents detailed results

from EPA's 2007 work on the motor vehicle greenhouse gas rule as well as updates to that work (although these updates do not reflect the effect of NHTSA's proposed rule setting more stringent CAFE standards) and requests input regarding the potential means by which the CAA could be used to address GHG emissions, including those from the transportation sector.

8. Can you tell us a little about programs that are already working on a voluntary basis to help curb energy use and greenhouse gas emissions, such as the Energy Star programs?

EPA manages a number of partnership programs that are having a significant impact in reducing greenhouse gas emissions. These programs are overcoming market barriers and help organizations and consumers make good decisions for the environment as well as their energy bills. In June 2008 EPA published "A Business Guide to U.S. EPA Climate Partnership Programs,"

http://www.epa.gov/partners2/Biz_guide_to_epa_climate_partnerships.pdf. This Guide describes the array of climate-related Agency programs. Some of these programs include:

ENERGY STAR. Begun in 1992, ENERGY STAR is a voluntary program jointly run by EPA and the Department of Energy designed to identify and promote energy-efficient products to reduce greenhouse gas emissions. Computers and monitors were the first labeled products. The program has grown tremendously over the last fifteen years to provide organizations of all sizes as well as consumers the tools and information they need to invest in energy efficiency where cost-effective. Through partnerships with more than 12,000 private and public sector organizations, EPA's key accomplishments include:

- The ENERGY STAR is a trustworthy label on over 50 product categories (and thousands of models) for the home and office;
- More than 2.5 billion ENERGY STAR products have been purchased by consumers;
- About 12 percent of new homes are being constructed to ENERGY STAR qualification standards nationally;
- About 12 percent of commercial buildings have been rated for energy efficiency with many undergoing targeted improvements and more than 4,000 commercial buildings have earned the ENERGY STAR for superior efficiency;

- 12 industrial sectors / subsectors are improving their efficiency through ENERGY STAR; and
- In 2007 alone, Americans with the help of ENERGY STAR, saved \$16 billion on their energy bills and reduced greenhouse gas emissions equivalent to those of 27 million vehicles.

Over the past decade, ENERGY STAR has been a driving force behind the more widespread use of such technological innovations as efficient fluorescent lighting, power management systems for office equipment, and low standby energy use.

Climate Leaders. Climate Leaders, a corporate leadership program, has grown to include more than 200 organizations. About half of the partners have announced aggressive greenhouse gas reduction targets for the future. These goals represent a potential reduction in greenhouse gas emissions of more than 13 million metric tons over business-as-usual outcomes.

Green Power Partnership and Combined Heat and Power Partnership. More than 1,000 organizations are participating in EPA's Clean Energy Supply programs, which include the Green Power Partnership and Combined Heat and Power (CHP) Partnership. Through the end of 2007, they have purchased more than 11 billion kWh of green power and installed more than 4,450 megawatts (MW) of new, environmentally beneficial CHP capacity.

State and Local Programs. EPA continues to enhance its efforts to assist state and local governments in their pursuit of clean energy policies by expanding its state partnership and municipal network. It now includes 16 states and hundreds of local governments. EPA is also co-facilitating the National Action Plan on Energy Efficiency (Action Plan) with the U.S. Department of Energy (DOE). This effort recently released a Vision for 2025: Developing a Framework for Change, which offers a framework of state-specific policies and programs to enable the acquisition of all cost-effective energy efficiency measures by 2025. One hundred twenty organizations across 49 states have made commitments to advance energy efficiency through the Action Plan.

Asia Pacific Partnership on Clean Development and Climate: This is a voluntary partnership among six major Asia-Pacific nations (Australia, China, India, Japan, the Republic of Korea and the United States). It is designed to accelerate the development and deployment of cleaner, more efficient technologies to meet national pollution reduction,

energy security and climate change concerns in ways that promote economic development and reduce poverty. As of 2000, the six partner countries emitted about half of all global greenhouse gas emissions.

Methane and F-Gas Programs. EPA's methane (CH₄) programs continue to help program participants reduce emissions of this potent greenhouse gas from landfills, agriculture, natural gas systems, and coal mines. In 2007, these programs avoided significant emissions of methane, exceeding their emissions reductions goals and maintaining national methane emissions well below 1990 levels. The partnerships that focus on fluorinated gases (F-gases) kept national emissions of these gases from industrial sources to well below 1990 levels, as well. Further, EPA has made important progress in the effort to reduce emissions from the use and maintenance of motor vehicle air conditioners.

Wood Smoke Programs. EPA manages programs that help to reduce wood smoke particulates and air toxics in local areas. The Great American Wood Stove Changeout Campaign provides information and incentives (e.g., rebates or discounts) to encourage the replacement of old technology wood stoves with EPA-certified appliances that burn over 70% cleaner and 50% more efficiently. The Outdoor Wood-Fired Hydronic Heater (OWHH) Program promotes the use of EPA-qualified models that are at least 70% cleaner and significantly more energy-efficient than pre-program models.

SmartWay Transport Partnership. More than 1,000 companies are actively participating in this program designed to reduce GHG emissions and save fuel from moving goods in the United States. These SmartWay companies combined are saving 600 million gallons of diesel fuel each year, reducing nearly 7 million tons of CO₂ emissions per year.

Performance Track. Facilities that are members of this partnership program have saved 310,000 tons of CO₂ emissions (2001 through 2006) in addition to reducing other air pollutants and hazardous waste.

9. How do you respond to reports that less energy intensive machines, such as washers and dryers, can prove to use more energy? (for example, with inadequate wash cycles)

Congress, in the Energy Policy and Conservation Act and subsequent legislation, has given the Department of Energy responsibility for establishing energy conservation standards for many consumer appliances and industrial equipment. The Department of Energy in its

rulemaking proceedings under EPCA does consider predicted energy use patterns, including the "rebound effect" – a phenomenon in which increased energy efficiency (and thus lower operating costs) may lead to higher usage. Thus, for example, a high-efficiency air conditioner will likely be run for more hours than would a low-efficiency model under the same conditions. The result of the rebound effect means that an increase in appliance efficiency can sometimes lead to a slightly-less-than proportionate decrease in real-world energy consumption. It is true that more efficient appliances have lower operating costs, and therefore may diminish, to some degree, consumers' responses to higher energy prices. In our experience, such effects are modest in scale and, in any event, are to a large degree offset by the greater utility that consumers enjoy by being able to afford using their appliances more intensively.

In conjunction with the Department of Energy, EPA has been successful advancing less energy intensive products in the market place through the ENERGY STAR program by adhering to the principle that these products must be cost effective to the consumer and perform the same or better than standard products. To that end, EPA and DOE have included a range of performance requirements along with the efficiency requirements in ENERGY STAR specifications for a number of products. ENERGY STAR qualified light bulbs, for example, must meet light quality and life requirements so that these important attributes are not traded off for increased efficiency.

10. Any new regulations regarding GHG emissions will need to take into account a broad range of issues. How long would the development of regulations, comparably complicated, normally take? Would you agree that the significant lasting impact of a new GHG regulation warrants a timeline that is sufficiently long enough, particularly due to the intricate nature of this regulation?

EPA recognizes that any regulations regarding GHG emissions will need to account for a broad range of issues. EPA's greenhouse gas ANPR identifies many issues for the public and requests comment on how the Clean Air Act, both in general and through specific sections, might be used to establish regulations for GHGs if requisite legal findings and requirements are met.

In the ANPR, we explored the possible development and implementation requirements under several Clean Air Act authorities. As we noted in this document, the length of time required to develop and implement comparable regulations is dependent on the statutory authority applied and the amount of flexibility provided in the statutory authority.

The ANPR is a first step in understanding the intricacies of GHG regulation and an initial effort to frame the discussion on the requirements for a comprehensive plan. As we noted in the ANPR, we recognize the development of a comprehensive plan for GHG regulation, assuming necessary tests for regulation are met, will take considerable effort. For this reason, we decided to release the ANPR and take public comment, as well as comment from other Federal Agencies, to more fully explore the potential interactions with and impacts on components of the Clean Air Act and other Federal statutes.

Also, as the ANPR makes clear and as EPA officials have testified, the Clean Air Act has some serious disadvantages when applied to GHGs, and we believe that new legislation would be better suited for this purpose. While it obviously takes considerable time to enact new legislation and then develop a regulatory program that implements it, new legislation also presents an opportunity to avoid many of the complex and cumbersome provisions of the Clean Air Act, and is likely to produce more desirable results faster.

11. Does the dramatic increase in voluntary GHG reductions by states and private corporations impact the necessity of a broad federal mandate? Has the EPA conducted a comprehensive study on the lasting impacts of the various programs private companies are voluntarily participating in?

The increase in voluntary GHG reductions is useful for several reasons. It often is a win-win activity, yielding both emissions reductions and cost-savings (e.g., in energy bills). It gives states, local governments, and private industry experience in measuring their emissions and emissions reductions and in identifying opportunities that may have been overlooked in the past. Finally, it will be useful in helping achieve our national goal of reducing GHG intensity by 18% from 2002 to 2012.

EPA and other federal agencies have done periodic assessments of the emissions impacts of our national climate change programs, including federal voluntary programs. For example, the latest U.S. "national communication" under the UN Framework Convention on

Climate Change (the Fourth U.S. Climate Action Report) provided historical and projected reductions for a wide range of federal climate programs managed by EPA, the Department of Energy, the Department of Agriculture, and other agencies (Table 4-2 of the Climate Action Report provides quantitative mitigation estimates by program for 2002, 2012, and 2020). We also provided selected results of state, NGO, and private sector programs in this report, although our focus has been on assessing the federal programs in detail. The report is online at <http://www.state.gov/g/oes/rls/rpts/car/>.

12. What is your reaction to Secretary Bremby's denial of Sunflower's permit to construct a new power plant?

It is my understanding that the decision of the Secretary of Kansas's Department of Health and the Environment to deny a PSD permit was based on a specific provision of Kansas state law that allows the Kansas Secretary to take any number of actions regarding air quality permits issued by that state. The Secretary relied on state law, not federal law, and thus that provision does not apply to federal permitting actions. With regard to federal permits, neither the Clean Air Act nor its federal implementing regulations contain a provision explicitly providing for general modification or denial of air permits, similar to that contained in Kansas law.

EDWARD J. MARKEY, MASSACHUSETTS
 CHAIRMAN
 EARL BLUMENAUER, OREGON
 JAY INSLEE, WASHINGTON
 JOHN B. LARSON, CONNECTICUT
 HILDA L. SOLIS, CALIFORNIA
 STEPHANIE HENSETH SANDLIN, SOUTH DAKOTA
 EMANUEL CLEAVER, MISSOURI
 JOHN J. HALL, NEW YORK
 JERRY McNERNEY, CALIFORNIA



F. JAMES BENSENBRENNER, JR., WISCONSIN
 RANKING MEMBER
 JOHN B. SHADEGG, ARIZONA
 GREG WALDEN, OREGON
 CANDICE S. MILLER, MICHIGAN
 JOHN SULLIVAN, OKLAHOMA
 MARSHA BLACKBURN, TENNESSEE

**Select Committee on
 Energy Independence and Global Warming
 U.S. House of Representatives
 January 8, 2008**

Mr. Stephen Johnson
 Administrator
 United States Environmental Protection Agency
 1200 Pennsylvania Avenue, N.W.
 Washington, DC 20460

Dear Administrator Johnson:

The Select Committee on Energy Independence and Global Warming is examining the problem of heat-trapping emissions caused by aviation and what can be done to reduce those emissions. EPA's 2007 inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990-2005 states that combustion of aviation fuels was responsible for approximately three percent of U.S. greenhouse gas emissions in 2005. Since heat-trapping emissions from aviation-related sources are expected to increase threefold in the next 20 years, it is imperative that this nation find ways to reduce such emissions.

Several studies recognize the link between aviation and global warming. For example,

- A February 2000 Government Accountability Office report found that "aviation emissions comprise a potentially significant and growing percentage of human-generated greenhouse gases and other emissions that are thought to contribute to global warming."¹ Furthermore, the report found that jet aircraft emissions deposited directly into the upper atmosphere may have a greater warming effect than gases emitted closer to the surface, such as automobile exhaust.
- The Intergovernmental Panel on Climate Change's report on Aviation and the Global Atmosphere similarly found that "a number of aircraft emissions can affect climate.... The effects of [aviation on] the atmosphere can be markedly different from the effects of the same emissions at ground level."²
- In October 2007, in response to a letter from Select Committee Chairman Markey regarding NextGen, the Federal Aviation Administration recognized that aviation "may be a serious long-term environmental issue facing the aviation industry," but opined that there were "large uncertainties in our present understanding of the magnitude of climate impacts." The response cites the

¹ General Accounting Office. (2000). *Aviation's Effect on the Global Atmosphere Are Potentially Significant and Expected to Grow*. Washington, DC: US Government Printing Office.

² Penner, Joyce E., et al, eds, *Aviation and the Global Atmosphere: A Special Report of the IPCC Working Groups I and III in collaboration with the Scientific Assessment Panel to the Montreal Protocol on Substances that Deplete the Ozone Layer*. Cambridge, UK: Cambridge University Press, 1999. Page 18.

EPA estimates of carbon dioxide emissions from aviation and admits that this analysis does not include airport operations emissions.

While the United States has yet to act to reduce aviation emissions, ministers from the European Union's 27 member states have now agreed to include aviation in the EU's CO₂ cap-and-trade scheme. On November 13, 2007, members of European Parliament voted to proceed with a proposal to impose a cap on CO₂ emissions for all planes arriving or departing from EU airports, while allowing airlines to buy and sell "pollution credits" on the EU carbon market. Some of the most important details are:

- All airlines flying to and from EU territory should join the scheme in 2011. The Parliament rejected the Commission's proposal that international flights should be given an extra year and ignored threats from other countries, including the United States, that they would instigate legal action if the EU attempts unilaterally to enforce compliance;
- Airlines would be required to reduce emissions by 10% compared to average 2004-2006 levels, rather than just having to maintain those levels, as the Commission had initially proposed;
- 25% of the pollution permits would be auctioned out to airlines, rather than having at least 90% distributed to operators for free, as the Commission had originally suggested. Revenues from the sales would be used to mitigate greenhouse gas emissions, fund relevant research and lower taxes and charges on more climate-friendly transportation modes such as rail and bus;
- If the Commission fails to develop legislation to address additional climate impacts caused by nitrogen oxide (NO_x) emissions from aircraft, the cost of all CO₂ permits bought by airlines would be multiplied by two;
- The aviation sector can only buy permits from other sectors if it first improves its own fuel efficiency, and;
- Military flights and planes weighing less than 20,000kg, such as business jets, would be excluded.

The Administration's continuing failure to regulate greenhouse gas emissions no longer has any legal foundation. In April 2007, the Supreme Court ruled that EPA has the authority under the Clean Air Act to regulate greenhouse gases, thus clarifying EPA's obligation to protect the public health and welfare from the effects of global warming.³

On December 5th, 2007, you received a petition from environmental organizations and the states of California, Connecticut, New Jersey, and New Mexico, the Commonwealth of Pennsylvania, and the City of New York. This petition demands that you propose and adopt regulations setting emissions standards to limit pollutants from aircraft using your authority under the Clean Air Act that states "the Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which

³ Massachusetts v. EPA, 549 US ____ (2007).

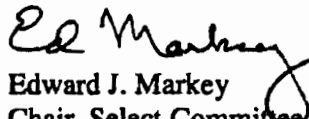
in his judgment causes, or contributes to, air pollution which may reasonable be anticipated to endanger public health and welfare."

In light of the above, the Select Committee respectfully seeks specific answers to the following questions:

1. Does EPA support regulating the emissions of greenhouse gases from aircraft? If not, why not?
2. What role, if any, did EPA play in the Administration's threat of legal action against the EU should it seek to enforce a cap on the emissions of greenhouse gases from aviation?
3. What advice, if any, has EPA provided to the FAA regarding the need to anticipate the regulation of CO₂ and other emissions from commercial aviation?
4. What information or guidance has EPA provided to the FAA regarding estimates of CO₂ and NO_x emissions from aviation in the context of the development of the FAA/NextGen Environmental Management Framework?
5. Please identify any and all research cited by EPA in support of its views of the effect of aviation on climate change.
6. What is the status of EPA's determination whether CO₂ emissions cause or contribute to pollution that may reasonably be anticipated to be a danger to human health and welfare?
7. What is the status of EPA's deliberations concerning whether aviation emissions such as CO₂, NO_x and other aviation pollutants are a danger to human health and welfare?

Thank you for your prompt attention to this request. Please contact Danielle Baussan or Jeff Duncan at 202-225-4012 with any questions.

Sincerely,



Edward J. Markey
Chair, Select Committee on Energy Independence
and Global Warming



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 31 2008

OFFICE OF
AIR AND RADIATION

The Honorable Edward J. Markey
Chairman
Select Committee on Energy Independence and Global Warming
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Markey:

Thank you for your letter of January 8, 2008, to U.S. Environmental Protection Agency (EPA) Administrator Stephen Johnson, regarding aviation-related greenhouse gas (GHG) emissions. The Administrator has asked me to respond to your letter. Climate change is a serious challenge and EPA is carefully considering the part aviation-related emissions contribute to the US inventory of GHG emissions.

The Select Committee's letter summarized several recent events related to aviation GHG emissions and requested our response to a number of questions. These are addressed below.

1. Does EPA support regulating the emissions of greenhouse gases from aircraft? If not, why not?

As stated in your letter, EPA recently received two separate petitions addressing GHG emissions from aircraft. These petitions ask EPA to: a) find that aviation-related GHG emissions cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare; b) propose regulations for such emissions; and c) promulgate final regulations. As you know, there has been considerable study conducted with respect to GHG emissions from the aviation sector. In 2006, U.S. emissions of GHGs from the aviation sector were roughly 4 percent below 2000 levels and accounted for approximately 3 percent of total U.S. greenhouse gas emissions. Since 2000, and following the events of September 11, 2001, there have been decreases in the number of commercial air carrier flights, significantly higher passenger load rates, retirement of older, less efficient aircraft and improvements in the fuel efficiency of new aircraft.

We are carefully considering the two petitions, including the scientific, policy and technical issues they raise, and will keep the Select Committee informed of our progress. We plan to solicit public comment and information on the petitions as part of the Advanced Notice of Proposed Rulemaking (ANPR) we intend to issue

later this Spring (see the response to Question 6 for more information on the ANPR).

2. What role, if any, did EPA play in the Administration's threat of legal action against the European Union (EU) should it seek to enforce a cap on the emissions of greenhouse gases from aviation?

Your letter summarized the EU program with respect to capping aviation-related CO₂ emissions and noted that the U.S. and other nations expressed concern about the legality of this program in the context of the Chicago Convention of 1944, which established the International Civil Aviation Organization. EPA technical staff provided aviation emissions data background and information on cap and trade programs for the interagency discussion, and participated in interagency meetings on the U.S. response, but did not participate directly in the formulation or communication of legal positions with respect to the European Union cap on the emission of GHGs from aviation.

3. What advice, if any, has EPA provided to the FAA regarding the need to anticipate the regulation of CO₂ and other emissions from commercial aviation?

Various offices within EPA and the Federal Aviation Administration (FAA) are in frequent contact with respect to aviation and environmental issues. We have frequently discussed the relationships between measures to control exhaust emissions such as NO_x and engine fuel efficiency (and therefore CO₂ emissions) as part of our past interagency coordination during the International Civil Aviation Organization standards setting processes. Furthermore, EPA has substantial interactions with FAA in the development of aviation GHG inventories. And EPA collaborated with FAA under the auspices of the National Science and Technology Council (NSTC) to develop the Energy and Environment component of the National Plan for Aeronautics R&D and Related Infrastructure (http://www.ostp.gov/cs/nstc/documents_reports); this plan includes integrated NO_x and fuel efficiency research goals. We are coordinating with FAA in developing our responses to the two administrative petitions.

4. What information or guidance has EPA provided to the FAA regarding estimates of CO₂ and NO_x emissions in the context of the development of the FAA/NextGen Environmental Management Framework?

With regard to the FAA's development of the NextGen Environmental Management Framework, FAA has access to all emission and fuel consumption data provided by the engine manufacturers as part of the emissions certification process as well as that gathered in other efforts. Working with EPA and others, FAA has developed a model to estimate GHG emissions during landing-take-off and cruise operations. However, we have not directly provided them information outside of that effort.

5. Please identify any and all research cited by EPA in support of its views of the effect of aviation on climate change.

EPA has not yet taken a formal position on the effects of aviation on climate change. The reports listed below capture most of the work we have participated in and the data we have relied upon in developing our GHG inventories and gaining an understanding of the technology and science issues involved. These and many other relevant documents are found on EPA and FAA websites or can be reached through links identified therein:

- IPCC, Aviation and the Global Atmosphere, 1999, at Summary for Policymakers, 4.5, available at <http://www.grida.no/climate/ipcc/aviation/index.htm>.
- IPCC, Climate Change 2007: The Physical Science Basis; Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, February 2007, at 186, available at <http://ipcc-wg1.ucar.edu/wg1/wg1-report.html>.
- EPA 2007 - Inventory of US Greenhouse Gas Emissions and Sinks: 1990-2005
- International Civil Aviation Organization Environmental Report - 2007
- EPA 2006 - Greenhouse Gas Emissions from the U.S. Transportation Sector 1990-2003
- FAA 2005 - SAGE: Global Aviation and Emissions Inventories for 2000-2004
- FAA 2004 - Report to the United States Congress, Aviation and the Environment

6. What is the status of EPA's determination whether CO₂ emissions cause or contribute to pollution that may reasonably be anticipated to be a danger to human health and welfare?

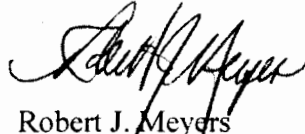
As Administrator Johnson explained to you in his letter of March 27, 2008, he has concluded that the best approach for moving forward on our response to the Supreme Court's decision in *Massachusetts v. EPA* is to issue an ANPR that will present and request comment on the best available science relevant to making an endangerment finding and the implications of this finding for regulation of both mobile and stationary sources. This approach gives the appropriate care and attention that these complex issues demand. It will also allow EPA to use the work we have already done. The ANPR will be issued later this Spring and will be followed by a public comment period. The Agency will then consider how best to respond to the Supreme Court decision and its implications under the Clean Air Act.

7. *What is the status of EPA's deliberations concerning whether aviation emissions such as CO₂, NO_x and other aviation pollutants are a danger to human health and welfare?*

EPA staff is still in the early stages of gathering and assessing scientific and technical information on whether aviation emissions of CO₂, NO_x, and other GHGs that impact climate cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare under section 231 of the Clean Air Act. As part of the ANPR we intend to issue later this Spring, we plan to solicit public comment and information on the petition.

Again, thank you for the Select Committee's letter. If you or other members of the Select Committee have any questions or concerns, you may call me or your staff may contact Patricia Haman, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-2806.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Meyers", written in a cursive style.

Robert J. Meyers
Principal Deputy Assistant Administrator

CHRISTOPHER H. SMITH
6TH DISTRICT, NEW JERSEY

CONSTITUENT SERVICE CENTERS
1540 Kuser Road, Suite A9
Hamilton, NJ 08619-3828
(609) 585-7878
TTY (609) 585-3660

108 Liberty Road, Suite 38A
Whiting, NJ 08759-1331
(732) 350-2300

2373 Rayburn House Office Building
Washington, DC 20515-4004
(202) 225-3765

<http://www.house.gov/chris-smith>



Congress of the United States
House of Representatives

COMMITTEES

FOREIGN AFFAIRS

**AFRICA AND GLOBAL HEALTH
SUBCOMMITTEE**
RANKING MEMBER

**WESTERN HEMISPHERE
SUBCOMMITTEE**

**COMMISSION ON SECURITY AND
COOPERATION IN EUROPE**
RANKING MEMBER

DEAN, NEW JERSEY DELEGATION

Facsimile Cover Sheet

To: Administrator Johnson / Christopher Bliley

Organization: EPA

Fax: 202-501-1519

From: Representative Chris Smith (NJ-04)

Date: 10/2/2007

Subject: Congressional Letter on EPA Ozone/Smog Regulations

Number of pages to follow (excluding cover sheet): 4

Comments:

Pls. Find Congressional Letter on EPA proposal to strengthen the National Ambient Air Quality Standard (NAAQS). If you have any questions please contact Ryan Goodwin in Rep. Smith's office at 202-225-3765.



Congress of the United States

House of Representatives

Washington, DC 20515

October 1, 2007

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Dear Administrator Johnson:

We are writing in response to your June, 2007 proposal to strengthen the National Ambient Air Quality Standard (NAAQS) for ground level ozone pollution, or smog. In light of the urgent need to improve air quality to protect public health, we urge you to adopt a final rule that meets the unanimous recommendations of the Environmental Protection Agency's independent scientific advisors. Specifically, we ask you to issue a final rule that sets the eight hour average standard for ozone at no more than .060 to .070 parts per million (ppm).

The EPA's panel of expert science advisors, the Clean Air Scientific Advisory Committee (CASAC), unanimously found that the smog standard "needs to be substantially reduced to protect human health, particularly in sensitive subpopulations," and that "there is no scientific justification" for retaining the current standard. CASAC called for an eight hour average ozone standard of .060 to .070 ppm. Experts on lung health, including the American Thoracic Society and the American Lung Association, are calling for a standard of .060 ppm given the strength of the scientific evidence.

The Clean Air Act requires air pollution standards to be set at a level that will "protect public health" with "an adequate margin of safety." Scientists have linked exposure to smog pollution with asthma attacks, lung damage, aggravated chronic lung disease, and premature death. Children, people with lung disease and the elderly are among those most susceptible to smog pollution, but even healthy adults display negative health effects when exposed to levels of ozone below the current standard of .080 ppm. Studies now show adverse effects in the lung occur at exposure levels as low as .060 ppm.

The positive impacts on the health of our citizens is compelling and we believe more than sufficient to warrant a substantial reduction in the current ozone standard. As an additional factor, it is interesting to note that studies have shown that there are large economic benefits to lowering the air pollution burden on public health and the environment. Smog pollution impedes economic activity through increased health care costs and premature death, absenteeism at work and school, lowered productivity, and reduced crop yields. On the other hand, many of the measures that reduce smog pollution have numerous co-benefits by lowering soot and other air pollution as well as the emissions of global warming gases.

PRINTED ON RECYCLED PAPER

Because of these policy considerations and the overwhelming scientific evidence in favor of a stronger smog standard, we ask you to issue a final rule that sets the eight hour average ozone standard at no greater than .060 to .070 parts per million.

Sincerely,

Chris Smith

Jim Moran

Jeffrey S. Schwartz

Patrick J. Kennedy

Will Ferguson

Adam B. Schiff

Billy McClellan

Paul Fuchs

Keith Ellison

Jim McDermott

Pat Grogan

Clara Kim

Phil Lobato

Wendy Liebman

Dennis K. Kunkin

Wayne T. Gihlbrecht

J. Sexton

Clement J. Mackay

Joe E. Seaman

[Signature]

Mahe Watt

Rail M. Hryjawa

Ozone Sign-On Letter

Representative	Office	Phone
Chris Smith (R-NJ)	2373 RHOB	x53765
Jim Moran (D-VA)	2239 RHOB	x54376
Frank LoBando (R-NJ)	2427 RHOB	x56572
Jim Saxton (R-NJ)	2217 RHOB	x54765
Jim McDermott (D-WA)	1035 LHOB	x53108
Maurice Hinchey (D-NY)	2431 RHOB	x56335
Adam Schiff (D-CA)	326 CHOB	x54176
Patrick Kennedy (D-RI)	407 CHOB	x54911
David Wu (D-OR)	2338 RHOB	x50855
Mike Ferguson (R-NJ)	214 CHOB	x55361
Mark Steven Kirk (R-IL)	1030 LHOB	x54835
Ed Markey (D-MA)	2108 RHOB	x52836
Allyson Schwartz (D-PA)	423 CHOB	x56111
Brad Miller (D-NC)	1722 LHOB	x53032
Jose Serrano (D-NY)	2227 RHOB	x54361
Keith Ellison (D-MN)	1130 LHOB	x54755
Wayne Gilchrest (R-MD)	2245 RHOB	x55311
Patrick Murphy (D-PA)	1007 LHOB	x54276
Betty McCollum (D-MN)	1714 LHOB	x56631
Dennis Kucinich (D-OH)	2445 RHOB	x55871
Maxine Waters (D-CA)	2344 RHOB	x52201
Raul Grijalva (D-AZ)	1440 LHOB	x52435



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 17 2007

OFFICE OF
AIR AND RADIATION

The Honorable Edward J. Markey
U. S. House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter of October 1, 2007, co-signed by 21 of your colleagues, regarding the Environmental Protection Agency's (EPA) June 2007 proposal to revise the national ambient air quality standards (NAAQS) for ground-level ozone.

I would like to assure you that, in making decisions regarding the NAAQS, the Administrator carefully evaluates the full body of available scientific evidence to ensure that the standards provide adequate protection for public health and welfare. EPA appreciates the importance of this decision for state and local areas. I have forwarded your comments, including your recommendation that EPA should tighten the primary ozone standard to a level of 0.060 to 0.070 parts per million, to the docket for this rulemaking (EPA-HQ-OAR-2005-0172), so that they may be considered as we move toward a final decision by March 12, 2008.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may call Josh Lewis, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-2095.

Sincerely,

A handwritten signature in black ink, which appears to read "Robert J. Meyers", is written over the typed name.

Robert J. Meyers
Principal Deputy Assistant Administrator

AL-10-001-6128

Congress of the United States

Washington, DC 20515

September 13, 2010

The Honorable Ken Salazar
Secretary
United States Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

The Honorable Tom Vilsack
Secretary
United States Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, D.C. 20460

The Honorable Nancy Sutley
Chair
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20506

Dear Secretaries Salazar and Vilsack, Administrator Jackson, and Chair Sutley,

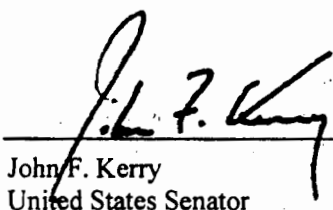
We are writing to request that you give strong consideration to hosting an America's Great Outdoors (AGO) Initiative "listening session" in Massachusetts this fall. AGO seeks to build on State, local, private, and tribal priorities for the conservation of land, water, wildlife, historic, and cultural resources, to determine how the Federal Government can best advance these priorities through public private partnerships and locally supported conservation strategies. Massachusetts would provide an excellent location to better serve those in southern New England.

While listening sessions have been held in, or are planned for, Maryland, South Carolina, Washington, California, North Carolina, Minnesota, Montana, New York, Utah, Pennsylvania, and New Hampshire, there are no listening sessions planned for southern New England despite the significant population, the array of active statewide and regional conservation organizations, and a culture that has connected New Englanders to the ideas driving the President's Initiative.

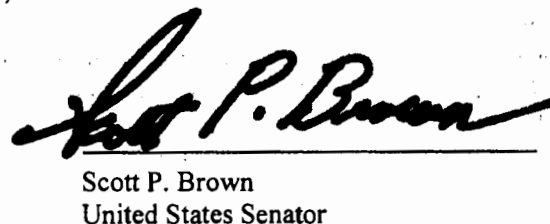
The people of Massachusetts and New England have supported innovative land conservation in the public interests for over one hundred years. Our land trusts, landowners, sportsmen, and nonprofit partners have worked diligently to promote a better quality of life in our region by protecting parks, open space, coastal estuaries, and vital watersheds. The people of Massachusetts and southern New England have much to offer the nation as we seek to engage the next generation to care for our natural resources and be better stewards for our landscapes.

We now respectfully request that you extend the staff and resources necessary to implement a collaborative partnership with these organizations to ensure a successful listening session this fall in Massachusetts.

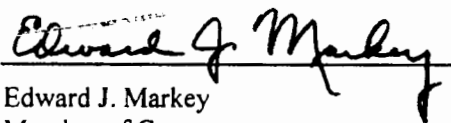
Sincerely,



John F. Kerry
United States Senator



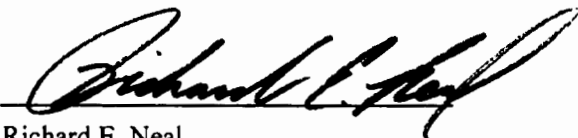
Scott P. Brown
United States Senator



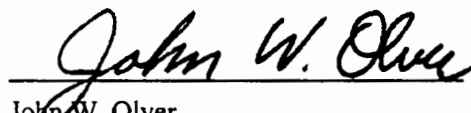
Edward J. Markey
Member of Congress



Barney Frank
Member of Congress



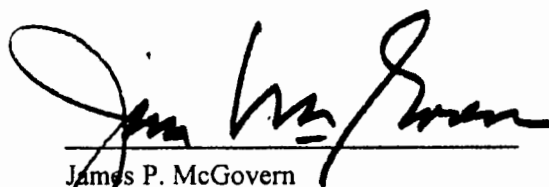
Richard E. Neal
Member of Congress



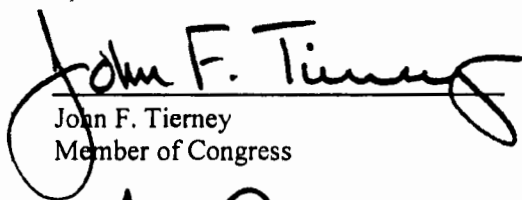
John W. Olver
Member of Congress



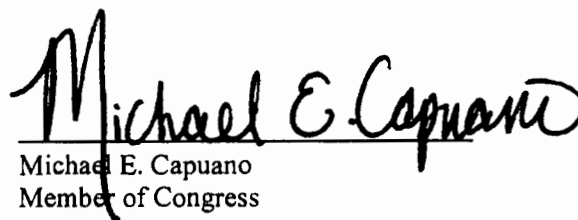
Bill Delahunt
Member of Congress



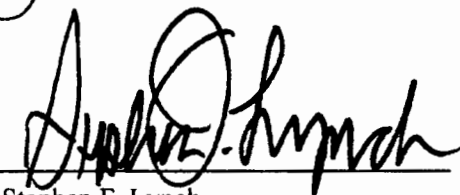
James P. McGovern
Member of Congress



John F. Tierney
Member of Congress



Michael E. Capuano
Member of Congress



Stephen F. Lynch
Member of Congress



Niki Tsongas
Member of Congress

AL-10-000-3637

COMMITTEES

ENERGY AND COMMERCE
SUBCOMMITTEE ON
ENERGY AND ENVIRONMENT
CHAIRMAN

SELECT COMMITTEE ON
ENERGY INDEPENDENCE AND
GLOBAL WARMING
CHAIRMAN

NATURAL RESOURCES

EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS

2108 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2107
(202) 225-2836

DISTRICT OFFICES:

5 HIGH STREET, SUITE 101
MEDFORD, MA 02155
(781) 396-2900

188 CONCORD STREET, SUITE 102
FRAMINGHAM, MA 01702
(508) 875-2900

<http://markey.house.gov>

Congress of the United States
House of Representatives
Washington, DC 20515-2107

March 5, 2010

Ms. Lisa Jackson
Administrator
US Environmental Protection Agency
Ariel Rios Building (AR)
1200 Pennsylvania Avenue N.W.
Washington, DC 20004

RE: JFYNetWorks

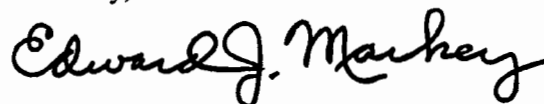
Dear Administrator Jackson:

I am writing to express my support for the Brownfields Job Training application submitted to the EPA by JFYNetWorks of Boston for its Environmental Technology Job Training Program.

JFYNetWorks' job training program is one of the premier workforce development organizations in Massachusetts. Since 1976, it has helped more than 50,000 youth and adults complete their high school education and acquire necessary job skills to begin a career. JFYNetworks has developed and delivered entry-level technician training programs for the biotech, health care, financial services, environmental remediation and energy efficiency industries. The Environmental Technology training program, which began in 1995, was one of the first environmental remediation programs in the country. In 1997-98, the Environmental Technology Job Training program was one of the first Brownfields job training pilot initiatives funded by the EPA. Since EPA's inception of the Brownfields job training program, JFYNetworks has continuously received support. Currently, JFYNetworks runs the only environmental job training program in Massachusetts that has been able to sustain its operation and maintain a successful record of job placements over the 14 years of its existence. EPA demonstrated its high regard for the program by awarding it the Environmental Merit Award in 2005.

I wholeheartedly support JFYNetWork's proposal to this program. Should you have any questions or require additional information, please do not hesitate to contact **Rocco DiRico** of my Medford District Office at 781-396-2900.

Sincerely,



Edward J. Markey

EJM/rd



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 13 2010

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

The Honorable Edward J. Markey
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter of March 5, 2010, supporting the Brownfields Job Training Grant application from JFY NetWorks of Boston. I appreciate your interest in the Brownfields Program and your support of JFY NetWorks' application.

As you know, the Small Business Liability Relief and Brownfields Revitalization Act assist states and communities throughout the country in their efforts to revitalize and reclaim brownfields sites. The Brownfields Job Training Program is an excellent example of the success that is possible when people of all points of view work together to improve the environment and their communities.

Last year's application process was highly competitive, with EPA evaluating more than 100 grant applications, including grant applications for an additional \$6.8 million available through the American Recovery and Reinvestment Act (ARRA). From these applications, EPA awarded thirteen grants with general program funds and fourteen grants with ARRA funds. We anticipate comparable interest in the Brownfields Grant Program this year and anticipate supporting approximately 12 communities through the Brownfields Job Training Grant Program in fiscal year 2010. We expect to announce this year's Brownfields Job Training Grants in spring 2010.

EPA's selection criteria for grant proposals are available in the *Application Guidelines for Brownfields Job Training Grants (October 2009)*, posted on our brownfields web site at www.epa.gov/brownfields. Each proposal will be carefully reviewed and evaluated by a selection panel that applies these objective criteria in this highly competitive program. Be assured that the grant proposal submitted by JFY NetWorks will be given every consideration.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Raquel Snyder, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-9586.

Sincerely,

A handwritten signature in black ink, which appears to read "Mathy Stanislaus", is written over a horizontal line.

Mathy Stanislaus
Assistant Administrator

AL-09-000-6/86

**THE WHITE HOUSE OFFICE
REFERRAL**

RECEIVED

2009 APR 27 PM 3:31

OFFICE OF THE
EXECUTIVE SECRETARY
April 16, 2009

TO: ENVIRONMENTAL PROTECTION AGENCY

ACTION REQUESTED: APPROPRIATE ACTION

DESCRIPTION OF INCOMING:

ID: 1003774

MEDIA: FAX

DOCUMENT DATE: April 03, 2009

TO: PRESIDENT OBAMA

FROM: THE HONORABLE HENRY WAXMAN
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

SUBJECT: REQUESTS THAT THE PRESIDENT ADD HYDROFLUOROCARBONS (HFC's) TO
THE EXISTING MONTREAL PROTOCOL THIS YEAR

COMMENTS:

**PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9 WORKING DAYS OF RECEIPT,
UNLESS OTHERWISE STATED, PLEASE TELEPHONE THE UNDERSIGNED AT 458-2590.**

**RETURN ORIGINAL CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT) TO: DOCUMENT TRACKING UNIT,
ROOM 437, OFFICE OF RECORDS MANAGEMENT - THE WHITE HOUSE, 20500**

**THE WHITE HOUSE
DOCUMENT MANAGEMENT AND
TRACKING WORKSHEET**



DATE RECEIVED: April 15, 2009

CASE ID: 1003774

NAME OF CORRESPONDENT: THE HONORABLE HENRY WAXMAN

SUBJECT: REQUESTS THAT THE PRESIDENT ADD HYDROFLUOROCARBONS (HFC's) TO THE EXISTING MONTREAL PROTOCOL THIS YEAR

ROUTE TO: AGENCY/OFFICE	(STAFF NAME)	ACTION		DISPOSITION	
		CODE	DATE	CODE	DATE
LEGISLATIVE AFFAIRS	PHIL SCHILIRO	ORG	04/16/2009		
ACTION COMMENTS:					
DEPARTMENT OF STATE		R	04/16/2009		
ACTION COMMENTS:					
✓ ENVIRONMENTAL PROTECTION AGENCY		A	04/16/2009		
ACTION COMMENTS:					
ACTION COMMENTS:					
ACTION COMMENTS:					

COMMENTS: 1 ADDL SIGNEE

MEDIA TYPE: FAX

USER CODE:

ACTION CODES	DISPOSITION		
A = APPROPRIATE ACTION B = RESEARCH AND REPORT BACK D = DRAFT RESPONSE I = INFO COPY/NO ACT NECESSARY R = DIRECT REPLY W/ COPY ORG = ORIGINATING OFFICE	TYPE RESPONSE	DISPOSITION CODES	COMPLETED DATE
	INITIALS OF SIGNER (W.H. STAFF) NRN = NO RESPONSE NEEDED OTBE = OVERTAKEN BY EVENTS	A = ANSWERED OR ACKNOWLEDGED C = CLOSED X = INTERIM REPLY	DATE OF ACKNOWLEDGEMENT OR CLOSEOUT DATE (MM/DD/YY)

KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES

REFER QUESTIONS TO DOCUMENT TRACKING UNIT (202)-456-2590

SEND ROUTING UPDATES AND COMPLETED RECORDS TO OFFICE OF RECORDS MANAGEMENT - DOCUMENT TRACKING UNIT ROOM 437, EEOB.

**SCANNED
BY
ORM**

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-8115

Majority (202) 225-2827
Minority (202) 225-3841

April 3, 2009

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

We are writing to encourage the Administration to offer an amendment to the Montreal Protocol this year to regulate the production and consumption of hydrofluorocarbons (HFCs), which are extremely potent greenhouse gases. To prevent catastrophic climate change, the United States and countries around the world will need to take a variety of steps. Although we strongly support a comprehensive international agreement on climate change, we believe that adding HFCs to the existing Montreal Protocol would be a sensible, cost-effective method of addressing a small but growing piece of the problem.

The Montreal Protocol is widely recognized as a tremendously successful international environmental agreement. It was negotiated in 1987 to stop the depletion of the stratospheric ozone layer by human-produced chemicals such as chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs). As a result of the Montreal Protocol's legally binding controls on the production and consumption of ozone depleting substances, global emissions of these gases are a small fraction of their 1990 levels. Although we still have a way to go, the ozone layer is on the path to recovery.

The Montreal Protocol has also provided substantial global warming benefits because ozone depleting chemicals like CFCs and HCFCs are also potent greenhouse gases. According to a recent scientific study, the Montreal Protocol will have reduced the total global warming impact from ozone depleting chemicals by about 50% in 2010.¹ This reduction will have the effect of delaying climate-related impacts by seven to twelve years.² In other words, without the Montreal Protocol, the world would be about a

¹ Proceedings of the National Academies of Science, *The Importance of the Montreal Protocol in Protecting Climate* (Mar. 20, 2007).

² *Id.*

decade further along the path to dangerous climate change, even after accounting for the global warming potential of HCFC substitutes.

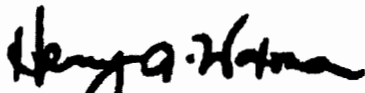
HFCs are the most common substitute for HCFCs. Although HFCs do not deplete the ozone layer, they are powerful greenhouse gases. HFCs currently account for only 2% of greenhouse gas emissions. Absent a new international agreement, however, HFC emissions are expected to steadily climb as HCFCs are phased-out.

We believe there are compelling reasons to take the approach that has worked so well and amend the Montreal Protocol to include a phase down of HFCs. The Protocol, which has been ratified by 194 countries, includes all of the key producer and user countries. Because the producers and users of HFCs overlap considerably with those of HCFCs, these stakeholders are already familiar with the Montreal Protocol process. The Montreal Protocol framework has Parties and staff with the technical expertise to phase-down HFCs, effective mechanisms for technology transfer, and a Multilateral Fund to assist developing countries with their phase-downs. The Parties have already acknowledged the importance of integrating climate change objectives into the Protocol.

The 21st Meeting of the Parties of the Montreal Protocol in November 2009 offers your Administration an early opportunity to restore U.S. leadership on climate and to create momentum for the December climate negotiations in Copenhagen. The Montreal Protocol framework has fostered successful international cooperation for over 20 years and can do so again. Proposing an amendment by the May deadline would send a strong signal that the U.S. is serious about tackling climate change.

Climate change is an enormous challenge. We look forward to working with you to harness the full potential of the Montreal Protocol to help meet this challenge.

Sincerely,



Henry A. Waxman
Chairman
Committee on Energy and Commerce



Edward J. Markey
Chairman
Subcommittee on Energy and Environment

cc: Joe Barton
Ranking Member
Committee on Energy and Commerce

Fred Upton
Ranking Member
Subcommittee on Energy and Environment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 29 2009

OFFICE OF
AIR AND RADIATION

The Honorable Edward J. Markey
Chairman, Subcommittee on Energy and Environment
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515-6115

Dear Chairman Markey:

Thank you for your April 3, 2009 letter to President Obama, co-signed by one of your colleagues, encouraging the Administration to offer an amendment to the Montreal Protocol to regulate the production and consumption of hydrofluorocarbons (HFCs).

The Administration submitted a letter on May 4, 2009, expressing interest in this subject to the Ozone Secretariat of the Montreal Protocol. In that letter, the Administration expressed interest in how best to address the projected future growth in HFCs and how to promote the development of alternatives. However, in the brief time available to us, we have not been able to complete our analysis or to fully consider how amending the Montreal Protocol to address HFCs would affect negotiations now taking place under the U.N. Framework Convention on Climate Change with respect to the post-2012 period. For these reasons, we were not able to submit a specific amendment proposal.

We plan to continue actively studying and analyzing this issue. Recent analysis of various proposals by U.S. Environmental Protection Agency (EPA) staff shows that significant climate benefits could be achieved through a phase down of HFCs, assuming both developed and developing country commitments. The EPA analysis assumes a baseline that is an average of 2004, 2005, and 2006 consumption and control measures starting in 2012. EPA's analysis is based on stepwise reductions of approximately 10 percent of baseline by 2015, 25 percent by 2020, 50 percent by 2030, and 65 percent by 2039. It also assumes a 10-year delay between developed and developing country commitments. This phase down modeled by EPA estimates cumulative emissions reductions of roughly 66,000 to 80,000 million metric tons of carbon dioxide equivalent through 2050.

We note that the Governments of Mauritius and the Federated States of Micronesia have submitted a specific proposal to amend the Montreal Protocol to provide for a phase down in HFC consumption and production. We understand that their action will put this issue on the agenda for the Meeting of the Parties to the Montreal Protocol in November. Their proposal will also help to focus discussion among Parties in connection with the July workshop in Geneva.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may call Josh Lewis, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-2095.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Craig". The signature is written in dark ink and is positioned above the printed name.

Elizabeth Craig
Acting Assistant Administrator

AL-08-000-9511

**THE WHITE HOUSE OFFICE
REFERRAL**

July 14, 2008

TO: ENVIRONMENTAL PROTECTION AGENCY

ACTION REQUESTED: DIRECT REPLY W/COPY

DESCRIPTION OF INCOMING:

ID: 757967
MEDIA: LETTER
DOCUMENT DATE: JUNE 18, 2008
TO: PRESIDENT BUSH
FROM: RAHM EMANUEL
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515
SUBJECT: WRITES CONCERNING THE NEED TO IMPLEMENT STRONGER
FUEL EFFICIENCY STANDARDS

COMMENTS:

PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9
WORKING DAYS OF RECEIPT, UNLESS OTHERWISE STATED, PLEASE TELEPHONE THE
UNDERSIGNED AT 456-2590.

RETURN **ORIGINAL** CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT)
TO: DOCUMENT TRACKING UNIT, ROOM 84, OFFICE OF RECORDS MANAGEMENT - THE WHITE
HOUSE, 20500

THE WHITE HOUSE DOCUMENT MANAGEMENT AND TRACKING WORKSHEET



DATE RECEIVED: 7/2/2008

CASE ID: 757967

NAME OF CORRESPONDENT: THE HONORABLE RAHM EMANUEL

SUBJECT: WRITES CONCERNING THE NEED TO IMPLEMENT STRONGER FUEL EFFICIENCY STANDARDS

ROUTE TO: AGENCY/OFFICE	(STAFF NAME)	ACTION		DISPOSITION	
LEGISLATIVE AFFAIRS	DAN MEYER	ORG	7/3/2008		
ACTION COMMENTS:					
✓ GA		R	7/14/08		
ACTION COMMENTS:					
CEQ		I	7/14/08	C	
ACTION COMMENTS:					
ACTION COMMENTS:					
ACTION COMMENTS:					

COMMENTS:

SCANNED

BY
ORM

MEDIA: LETTER

USER CODE: 1 ADDL
SIGNEE

ACTION CODES:	DISPOSITION		
A - APPROPRIATE ACTION B - RESEARCH AND REPORT BACK D - DRAFT RESPONSE I - INFO COPY/NO ACT NECESSARY R - DIRECT REPLY W/ COPY	TYPE RESPONSE:	DISPOSITION CODES:	COMPLETED DATE:
	TYPE RESPONSE = INITIALS OF SIGNER NRN = NO RESPONSE NEEDED	A - ANSWERED/ ACKNOWLEDGED C - CLOSED X - INTERIM REPLY	COMPLETED = DATE OF ACKNOWLEDGEMENT OR CLOSE- OUT DATE (MM/DD/YY)

REFER QUESTIONS AND ROUTING UPDATES TO DOCUMENT TRACKING UNIT (ROOM 437, EEOB) EXT-62590 KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO OFFICE OF RECORDS MANAGEMENT

757967

Congress of the United States
Washington, DC 20515

June 18, 2008

President George W. Bush
The White House
1600 Pennsylvania Ave, NW
Washington, DC 20500

Dear Mr. President,

Yesterday morning, we read with great interest an article in the *Wall Street Journal* that indicated a draft of an upcoming Environmental Protection Agency (EPA) regulatory initiative asserts that “[c]ars and trucks could be even more fuel-efficient than currently required by law and achieve fuel efficiency better than the auto-maker fleet average of 35 miles per gallon required by 2020.”¹

The article continued to state that “the EPA staff concludes that, based on advanced technologies such as plug-in hybrid vehicles, vehicle fuel efficiency could be well above 35 miles per gallon between 2020 and 2025,” and that the “draft document suggests the EPA staff is contemplating issuing motor-vehicle emissions standards that would be more stringent than currently required by federal law and would be phased in more quickly.”²

This is good news for drivers who are suffering at the pump and want more fuel efficient vehicles, and it is good news for our environment. Now, we urge you to join us and lead our nation toward energy independence.

We hope that your Administration will heed the advice of its own Energy Information Administration (EIA) Administrator, Guy Caruso, in determining the maximum feasible fuel economy standards the National Highway Traffic Safety Administration (NHTSA) is directed by law to promulgate. Currently, NHTSA is using EIA’s 2008 forecast for gasoline prices that range from \$2.42/gallon in 2016 to \$2.51/gallon in 2030. However, while testifying before the House Select Committee on Energy Independence and Global Warming, Administrator Caruso agreed that NHTSA should use EIA’s *high* gas price scenario in setting fuel economy standards.³ In assuming the more reasonable range of \$3.14/gallon in 2016 to \$3.74/gallon in 2030 demonstrates that the technology is available to cost-effectively achieve a much higher fleet wide fuel economy of nearly 35 mpg in 2015.

With gas prices over \$4 per gallon, we need to do everything we can to reduce demand and ease the burden on American families. Increasing fuel efficiency is an integral part

¹ <http://online.wsj.com/article/SB121367237676080133.html>

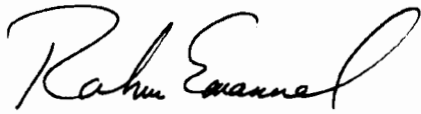
² *ibid*

³ <http://www.youtube.com/watch?v=umlei2-F9t8&eurl=http://globalwarming.house.gov/pubs/?id=0043>

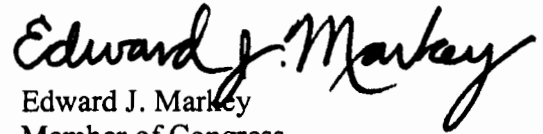
of reducing demand and the price of gas, and we are pleased that your Administration recognizes the capability and need for implementing stronger fuel efficiency standards.

Our offices look forward to hearing from your staff on the details of the CAFE standards beyond 35 mpg by 2020 that you support.

Sincerely,

A handwritten signature in black ink that reads "Rahm Emanuel". The signature is fluid and cursive, with the first name "Rahm" being more prominent than the last name "Emanuel".

Rahm Emanuel
Member of Congress

A handwritten signature in black ink that reads "Edward J. Markey". The signature is fluid and cursive, with the first name "Edward" being more prominent than the last name "Markey".

Edward J. Markey
Member of Congress

cc Stephen Johnson, EPA Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 19 2008

OFFICE OF
AIR AND RADIATION

The Honorable Edward J. Markey
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter to the President on June 18, 2008, regarding statements from draft documents belonging to the Environmental Protection Agency (EPA) that were cited in an article published in the Wall Street Journal.

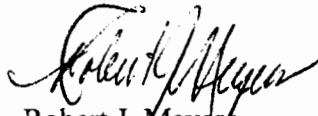
I agree with you that the federal government should do what it can to reduce transportation fuel demand and ease the burden on American families. As you know, in April of this year the Department of Transportation (DOT) issued a Notice of Proposed Rulemaking to increase fuel economy standards for passenger cars and light trucks through model year 2015. Utilizing the new authority and direction Congress provided in the Energy Independence and Security Act (EISA) of 2007, DOT proposed new standards for passenger cars and light duty trucks for model years 2011 to 2015, the maximum number of model years for a single rulemaking that is allowed by the Act. DOT proposed, on average, a 4.5% yearly increase in corporate average fuel economy (CAFE) standards for those model years.

EPA issued an Advance Notice of Proposed Rulemaking (ANPRM) on July 11, 2008, published in the Federal Register on July 30, 2008, that analyzes the issues associated with regulating greenhouse gas emissions from mobile sources under the Clean Air Act and which seeks public comment on these issues. With respect to passenger cars and light trucks, EPA presented an evaluation of two greenhouse gas emissions standard-setting approaches that could lead to average new passenger car and light truck fuel economy levels of about 33 miles per gallon in 2018 and 38 miles per gallon in 2020, respectively. In our economic analyses of these two proposals, we assumed fuel prices in the 2010-2020 timeframe of a little more than \$2.00 per gallon, based on the estimates in the 2007 Annual Energy Outlook. We also conducted sensitivity analyses at higher fuel prices.

EPA is currently seeking public comment on the analyses and issues raised in the ANPRM and supporting technical documents. In addition to responding to the Supreme Court's decision in *Massachusetts v. EPA*, we believe this effort will serve to increase the public's understanding of the issues involved in regulating greenhouse gases under the Clean Air Act, including how its provisions might be applied to mobile sources, utility vehicles, and light duty trucks.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Patricia Haman, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-2806.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert J. Meyers", written in a cursive style.

Robert J. Meyers
Principal Deputy Assistant Administrator

EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS

ENERGY AND COMMERCE COMMITTEE
RANKING MEMBER
SUBCOMMITTEE ON
TELECOMMUNICATIONS AND
THE INTERNET

SELECT COMMITTEE ON
HOMELAND SECURITY

RESOURCES COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515-2107

2108 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2107
(202) 225-2836

DISTRICT OFFICES:

5 HIGH STREET, SUITE 101
MEDFORD, MA 02155
(781) 396-2900

188 CONCORD STREET, SUITE 102
FRAMINGHAM, MA 01702
(508) 875-2900
www.house.gov/markey

April 9, 2004

The Honorable Mike Leavitt
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Leavitt:

I am writing to request the immediate declassification of all documents in the possession of the Environmental Protection Agency related to the Three Mile Island (TMI) nuclear accident in accordance with Presidential Executive Order 13292. In addition, I ask that you provide me with a copy of all such documents.

As you know, the 25 year anniversary of the TMI accident was on March 28, 2004. On that date, Nuclear Regulatory Commission (NRC) Chairman Nils Diaz told CNN that "Three Mile Island was not really a disaster in radiological terms. There was no significant amount of radiation released, nobody was hurt." The NRC also stated in its publicity materials released for the TMI anniversary that TMI brought "about sweeping changes involving emergency response planning, reactor operator training, human factors engineering, radiation protection, and many other areas of nuclear power plant operations. It also caused the U.S. Nuclear Regulatory Commission to tighten and heighten its regulatory oversight. Resultant changes in the nuclear power industry and at the NRC had the effect of enhancing safety."

You may be aware that Presidential Executive Order 13292 Part 3, which was published on March 25, 2003, states that "Our democratic principles require that the American people be informed of the activities of their Government," that "information shall be declassified as soon as it no longer meets the standards for classification under this order," and ultimately calls for automatic declassification of documents that are more than 25 years old. The only materials that would be exempt from the automatic declassification requirements would be those that would threaten national or homeland security or those that reveal the identity of a confidential human source.

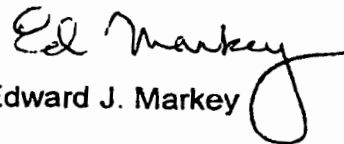
It is in the public interest to disclose all documents related to TMI; Numerous members of the communities living near TMI have been attempting to obtain these documents for years in order to ascertain additional details

CC 4
Chad
John
Craig
Jim
Patty

regarding the radiation levels they may have been exposed to. Moreover, Americans have the right to be informed of the activities of their Government during and subsequent to the country's most serious nuclear reactor accident. If, as was stated by Commission Chairman Diaz to CNN, no significant amount of radiation was released, shouldn't interested parties be able to review the documents themselves in order to be sure? And if, as the NRC publicity materials state, the industry has undergone sweeping changes that enhanced safety and emergency response planning, there should be no national or homeland security risk in disclosing any previously classified materials regarding the cause of an accident that occurred 25 years ago.

Please provide these documents to my office by April 28, 2004. If there are specific documents that you believe should not be declassified, please provide a list of all such documents as well as the reason why the materials contained therein should remain at a classified level. Thank you very much for your consideration of this important matter. If you have any questions or concerns, please have your staff contact Dr. Michal Freedhoff of my staff at 225-2836.

Sincerely,


Edward J. Markey



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AL0400529
C/O

MAY 12 2004

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Edward Markey
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Markey:

Thank you for your letter of April 9, 2004, to Administrator Leavitt requesting the immediate declassification of all documents in possession of the Environmental Protection Agency (EPA) related to the Three Mile Island (TMI) nuclear accident that occurred on March 28, 1979. I am pleased to respond on behalf of the Administrator.

In response to your letter, we have conducted a thorough search of our files and have determined that EPA has no classified documents in our files related to the TMI accident. For future reference, EPA does not have the authority to classify documents, and therefore any such documents would need to be de-classified by an agency that has such authority.

Again, thank you for your letter. I appreciate the opportunity to be of service and trust the information provided is helpful. If I can be of further assistance, please contact me or your staff may contact Catherine Sulzer at (202) 564-2464.

Sincerely,

A handwritten signature in dark ink, appearing to read "Charles L. Ingebretson".
Charles L. Ingebretson

EDWARD J. MARKEY OF MASSACHUSETTS
RANKING DEMOCRATIC MEMBER

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

October 31, 2012

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Dear Administrator Jackson:

I am writing to request information about how the Environmental Protection Agency (EPA) regulates the effects of cooling water intake structures on aquatic wildlife, including threatened and endangered species. Through my investigation of the Nuclear Regulatory Commission (NRC) re-licensing proceedings at Pilgrim Nuclear Power Station (PNPS) on Cape Cod Bay in Plymouth, Massachusetts, I have become particularly concerned that in some cases, EPA has failed to ensure that facilities with cooling water intake structures continue to comply with the Clean Water Act. In the case of PNPS, EPA has extended its Clean Water Act permits without review for nearly two decades, despite significant changes in the Cape Cod Bay environment and the status of threatened and endangered species.

To issue a National Pollutant Discharge Elimination System (NPDES) permit, EPA must determine that a facility complies with Section 316(b) of the Clean Water Act, which requires that, "the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact." EPA must re-issue NPDES permits every five years, though in some circumstances permits may be administratively extended.¹ The current NPDES permit for PNPS was issued in 1991 and amended in 1994; it expired in 1996 and has been renewed administratively since then. Thus, it appears that EPA has not evaluated PNPS's 316(b) compliance for nearly two decades. In conversations with EPA staff, I was informed that EPA has once again administratively extended

¹ http://cfpub.epa.gov/npdes/allfaqs.cfm?program_id=0#115

PNPS's permit while it finalizes new regulations for section 316(b), which it now expects to do by June 27, 2013.²

A primary way that cooling water intake structures harm wildlife is through the impingement and entrainment of aquatic organisms in cooling systems. Impingement occurs when fish and other aquatic life forms are trapped against cooling water intake screens. Entrainment occurs when aquatic organisms are drawn through a cooling structure and then pumped back out. Aside from these physical impacts, power plants also discharge heated effluent that contains chemical compounds; this thermal and chemical pollution may directly harm organisms, or indirectly harm them by degrading the quality of their habitat.

It is particularly important to consider changes in the effects of thermal pollution in light of climate change, which will decrease the amount of water available for cooling while simultaneously increasing the temperature of the water that is available. Nuclear power plants are already struggling to deal with warming waters, placing even greater demands on aquatic ecosystems and jeopardizing electric power reliability.³ This summer, a nuclear power plant in Illinois had to petition the NRC for special permission to continue operating while the temperature in its cooling pond spiked to unprecedented levels. Referencing the record-setting water temperature, a spokesman for the company explained that, "clearly, the calculations when the plant was first operated in 1986 are not what is sufficient today, not all the time."⁴ Clearly, an updated examination by EPA of the effects of thermal pollution on aquatic ecosystems and the use of once-through cooling is long overdue.

PNPS operations have subjected millions of organisms to thermal pollution, impingement and entrainment,⁵ and for more than twenty years, no efforts have been made by federal regulators to ensure that PNPS is using the best available technology to minimize these impacts. Moreover, much has changed about the physical and biological environment of Cape Cod Bay in the past 20 years. The temperature in Cape Cod Bay has increased during the last decades; according to records dating back to 1854, the temperature in the Bay during the first half of 2012 was 1.0 °F higher than the historical average for that time period.⁶ In response to these and other stresses, populations of organisms critical to the Cape Cod ecosystem have been declining. For example, the Atlantic sturgeon was recently added to the federal list of threatened species,⁷ and river herring have been listed as a species of special concern.⁸ It is difficult to imagine how a

² <http://water.epa.gov/lawsregs/lawsguidance/cwa/316b/>

³ <http://www.ctmirror.org/story/17512/millstone-shutdown-sign-broader-water-power-conflicts-climate-change>

⁴ <http://green.blogs.nytimes.com/2012/07/17/so-how-hot-was-it/>

⁵ <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/pilgrim.html>

⁶ NOAA Extended Reconstructed Sea Surface Temperature database, available at <http://www.ncdc.noaa.gov/ersst/>. Data referenced is based on using the 42°N 70°W 2-degree bin, located in Cape Cod Bay.

⁷ <http://www.nmfs.noaa.gov/pr/species/fish/atlanticsturgeon.htm>

⁸ http://www.nmfs.noaa.gov/pr/pdfs/species/riverherring_detailed.pdf

permit issued in 1991 would be adequate in this increasingly variable, increasingly sensitive environment.

The NRC licenses new power plants for 40 years and can re-license them for an additional 20 years following an application by the licensee. The licensing and re-licensing processes examine environmental effects and must conduct a full review as specified by the National Environmental Policy Act. In addition, the NRC must comply with other relevant environmental statutes, including the Endangered Species Act and the Magnuson-Stevens Fishery Management Conservation Act. As part of the PNPS re-licensing proceeding, the NRC prepared a Generic Environmental Impact Statement, which EPA commented on in a letter dated August 30, 2007. In this letter, EPA acknowledged that it is not the NRC's responsibility to determine whether PNPS operation complies with the Clean Water Act, as this responsibility is EPA's to undertake through the NPDES permit process. However, EPA raised concerns about effects of impingement and entrainment on aquatic wildlife and requested further information about how these effects would be mitigated.

The NRC also consulted with the National Oceanic and Atmospheric Administration (NOAA) to examine impacts of PNPS relicensing on threatened and endangered species, as well as species managed under the Magnuson-Stevens Fishery Conservation and Management Act. In a letter dated May 17, 2012, NOAA stated that PNPS re-licensing is unlikely to adversely affect threatened and endangered species. However, they concluded the letter by stating that, "if in the future EPA issues a revised NPDES permit for this facility, re-initiation of this consultation, involving both EPA and NRC, is likely to be necessary." With regard to essential habitat for species managed under the Magnuson-Stevens Act, NOAA wrote a letter to the NRC dated January 23, 2007, in which they explained that these issues "would be most appropriately addressed through EPA's NPDES permit renewal process."

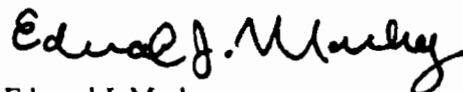
Overall, it is evident that despite the fact that EPA's NPDES permit for PNPS is 20 years old and the low likelihood that it will be re-examined in the near-term, both the NRC and NOAA cited EPA's NPDES permitting process as the appropriate way to examine impacts of cooling water intake on threatened and endangered species and other wildlife as part of the decision to allow PNPS to continue to operate until 2032. I am concerned that EPA has been derelict in its duties to protect endangered species and other wildlife from effects of cooling water intake structures at PNPS. I am even more concerned that the issue at PNPS may not be an isolated incident, but may be indicative of an ongoing practice that leaves wildlife entrained in a bureaucratic black hole and without adequate protection.

So that I can better understand the steps that EPA is taking to address effects of cooling water intake structures on endangered and threatened species and other wildlife, I ask you to provide answers to the following questions by November 30, 2012.

1. When EPA issues a NPDES permit for a facility with cooling water intake structures, what actions does it take to ensure that a facility complies with section 316(b) of the Clean Water Act? Please answer this question for NPDES permit renewals and administrative extensions as well.
2. How many facilities with cooling water intake structures currently hold NPDES permits? Of these, how many facilities with cooling water intake structures have had their current NPDES permits administratively extended for more than ten years since the permit was first issued? For each facility, how many years has it been since the original or renewed permit expired? Is EPA aware of any variances from applicable requirements at each of these facilities (e.g, a variance that would allow the license holder to exceed thermal loading limits into an aquatic ecosystem)? If so, please provide all relevant documentation. Please also indicate the name, location, type of facility, type of water body the facility draws water from, and which federally listed species (if any) are present in the water body.
3. Once regulations are finalized, how much time will operators have to update their facilities and submit their applications for a new NPDES permit? What measures does EPA plan to take to ensure compliance?
4. Given that EPA will face a substantial backlog of NPDES permit reviews for facilities with cooling water intake structures, how will EPA decide which facilities to review first? Has EPA established a protocol for prioritizing facilities? How long does EPA estimate that it will take to reissue permits for all eligible facilities?

Thank you for your assistance and cooperation in responding to this request. Should you have any questions about this request, please contact Jill Cohen or Michal Freedhoff of the House Committee on Natural Resources Democratic Staff at 202-225-6065.

Sincerely,



Edward J. Markey
Ranking Member
House Committee on Natural Resources



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 13 2013

OFFICE OF
WATER

The Honorable Edward J. Markey
Ranking Member
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter of October 31, 2012, regarding the National Pollutant Discharge Elimination System (NPDES) permit for the Pilgrim Nuclear Power Station. Your letter expressed particular concern about the effect on aquatic wildlife, including threatened and endangered species, of cooling water intake structures like those at the Pilgrim facility. The Environmental Protection Agency (EPA) is committed to protecting listed species as we establish requirements for cooling water intake structures.

Your letter asked a number of questions. Responses to those questions are contained in the enclosures.

Again, thank you for your letter on this important issue associated with a rulemaking we are on schedule to complete. If you have further questions, please contact me or your staff may call Greg Spraul in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0255.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy K. Stoner", is written over a horizontal line.

Nancy K. Stoner
Acting Assistant Administrator

Enclosures

Enclosure A – Responses to questions from Congressman Markey re: cooling water intakes

1. When the EPA issues a NPDES permit for a facility with cooling water intake structures, what actions does it take to ensure that a facility complies with section 316(b) of the Clean Water Act? Please answer this question for NPDES permit renewals and administrative extensions as well.

The EPA's regulations require that an NPDES permit for facilities with cooling water intake structures must include conditions to implement section 316(b) of the Clean Water Act (CWA). Section 316(b) provides that any standard established pursuant to sections 301 or 306 of the CWA and applicable to a point source must require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available (BTA) for minimizing adverse environmental impact. The EPA has promulgated regulations that establish section 316(b) standards for *new* facilities at 40 C.F.R. §125 Subpart I and N. With respect to *existing* facilities, the EPA has proposed regulations that are currently scheduled for promulgation by June 2013. Until these regulations are final, under the EPA's current regulations at 40 C.F.R. § 125.90(b), existing facilities must meet BTA requirements as determined by the NPDES permitting authority on a case-by-case, best professional judgment (BPJ) basis.

The permitting process for an individual NPDES permit for cooling water intake structures, at 40 C.F.R. § 122.21(r), requires the operator of a facility to submit a permit application for a new or renewed permit to their permitting authority.¹ The permitting authority relies on the information provided in the application, in part, for the determination of appropriate section 316(b) permit conditions. After receiving the application, the permitting authority reviews the application for completeness and accuracy. When the application is complete, the permitting authority, using the data submitted, begins to develop the draft permit and the justification for the permit conditions (referred to as the fact sheet or statement of basis). As necessary, the permitting authority can use its information gathering authorities to obtain any additional information needed. The decision-making process for deriving permit requirements is documented in the permit fact sheet or statement of basis.

After the draft permit is complete, the permitting authority must provide an opportunity for public participation. A public notice announces the draft permit and interested parties may submit comments. Based on the comments, the permitting authority then develops the final permit, with careful attention to documenting the process and decisions for the administrative record. Then the permitting authority issues the final permit to the facility for a specific period not to exceed five years.

Consistent with section 558(c) of the Administrative Procedures Act, the EPA regulations, at 40 C.F.R. §122.6, provide that submission of a timely and complete permit application for renewal will "administratively continue" the permit until the permitting authority takes action on the application. The conditions of an administratively continued permit, including any cooling water intake structure requirements, remain fully effective and enforceable until the new permit is issued.

¹ The NPDES authority can be either EPA or an authorized state. See the following map for details:
http://www.epa.gov/npdes/images/State_NPDES_Prog_Auth.pdf

2. How many facilities with cooling water intake structures currently hold NPDES permits? Of these, how many facilities with cooling water intake structures have had their current NPDES permits administratively extended for more than ten years since the permit was first issued? For each facility, how many years has it been since the original or renewed permit expired? Is EPA aware of any variances from applicable requirements at each of these facilities (e.g. a variance that would allow the license holder to exceed thermal loading limits into an aquatic ecosystem)? If so, please provide all relevant documentation. Please also indicate the name, location, type of facility, type of waterbody the facility draws water from, and which federally listed species (if any) are present in the water body.

The EPA estimates that approximately 1,260 facilities withdraw cooling water and may be potentially subject to regulation under the EPA's April 2011, proposed rule for existing facilities (76 FR 22174). Of these, the EPA has detailed information (usually including a permit ID and geographic location) on 871 facilities, using its 2000 industry survey and Energy Information Administration data. The EPA was able to cross-reference permit ID numbers with information contained in its CWA permit tracking systems for most of these 871 permits to determine their current status. We identified approximately 28 active facilities with permits that have been administratively continued for more than 10 years.

Enclosure B lists 897 cooling water intakes with known locations at the 871 facilities based on the EPA's 2000 industry survey (the larger facilities may have multiple intakes). The spreadsheet identifies facilities with NPDES permits and provides the facility name, location, type of facility, and type of waterbody the facility draws water from. It also identifies species that may be present in the waterbody that are listed under the Endangered Species Act as of August 2012. There are two tabs showing whether species may be present. The first tab shows whether a facility's intake is within designated critical habitat. The EPA determined this based on geographic information system analysis using facility location information overlaid on maps of designated critical habitat obtained from the U.S. Department of the Interior. The second tab shows whether a facility's intake is within the range of habitat of listed species. The habitat maps used for this analysis are from the International Union for the Conservation of Nature, NatureServe, and the National Oceanic and Atmospheric Administration's Essential Fish Habitat. The enclosed spreadsheet also shows the permit issuance and expiration dates according to the EPA's permit tracking systems as of November 2012.

Your letter asks how many facilities have a variance from "thermal loading limits." We interpret your query to be asking how many facilities have received variances under CWA section 316(a) from otherwise applicable technology-based and/or water quality-based thermal discharge requirements under CWA section 301. CWA section 316(a) allows permits to contain less stringent thermal discharge limits than would otherwise apply under section 301, if it is shown that the less stringent limits will nevertheless be able to assure the protection and propagation of the receiving water's balanced indigenous population of fish, shell fish and wildlife. Currently, the EPA is unable to provide an accurate estimate of the number of variances from otherwise applicable requirements at these facilities. Because most states have authorized NPDES programs, they maintain detailed NPDES data for their state system and provide only a specified set of data to the EPA that does not include 316(a) variance information.

3. Once regulations are finalized, how much time will operators have to update their facilities and submit their applications for a new NPDES permit?

The compliance timeline for covered facilities will depend on (1) the requirements of the final 316(b) regulation which is scheduled to be complete by June 2013 and (2) the facilities' permit renewal schedule. The EPA proposed a compliance timeline in the April 20, 2011, proposed rule for existing facilities which can be found at 76 FR 22248, and §125.93 at 76 FR 22282. The proposed regulatory text suggests compliance schedules for impingement and entrainment would be "as soon as possible, based on the schedule of requirements set by the Director" (see both §125.93(a) and (b)), and would add for impingement the further requirement that compliance be demonstrated "in no event later than" eight years after the effective date of the rule.

What measures does EPA plan to take to ensure compliance?

All NPDES permits establish monitoring, reporting and recordkeeping requirements for limits contained in the permit, as appropriate, including any new limits based on any new 316(b) requirements. Final compliance monitoring requirements for existing facilities will depend on the requirements of the final 316(b) regulation which is scheduled to be completed in June 2013. A discussion of compliance monitoring in the April 20, 2011, proposed rule for existing facilities can be found at 76 FR 22256 to 22259, and §125.96 at 76 FR 22286. The proposed regulatory text suggests compliance monitoring for the impingement requirements, which would depend on the compliance route chosen by the facility and approved by the Director (e.g., monitoring impingement mortality rates or velocity of intake flow). The proposed regulatory text does not contain specific compliance monitoring for entrainment at existing units because entrainment requirements at existing units are set on a case-by-case basis, at the discretion of the Director. The proposed regulatory text also includes compliance monitoring for new units at existing facilities, which again depend on the compliance route chosen by the facility and approved by the Director (e.g., demonstrating flow reductions or entrainment reductions).

4. Given that EPA will face a substantial backlog of NPDES permit reviews for facilities with cooling water intake structures, how will EPA decide which facilities to review first? Has EPA established a protocol for prioritizing facilities?

When the final existing facilities rule is promulgated, any new requirements would be applied as current permits expire and are renewed. The EPA does not anticipate the new rule adding to the permit backlog or creating a logjam. Rather, the EPA intends to encourage permitting authorities to prioritize their permit renewals by taking site-specific conditions into account. These conditions may include a number of factors described in the April 2011, proposed rule at §125.98 at 76 FR 22287, such as thermal discharges, energy reliability and grid requirements. The preamble also includes a discussion that "guides the Director when considering cost-benefit analysis for permit conditions" at 76 FR 22260 to 22262.

How long does EPA estimate that it will take to reissue permits for all eligible facilities?

Given the five-year time frame of NPDES permits, the EPA estimates that it will take at least five years from the time the rule goes into effect to reissue most permits for facilities subject to the existing facilities rule. Whenever the permit is issued, the timeframes for compliance would be specified as permit conditions in the permit.

Congress of the United States
Washington, DC 20515

June 21, 2011

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20640

Dear Administrator Jackson:

Forty years after adoption of the Clean Air Act, toxic air pollution from power plants continues to harm the health of our children and our communities. We commend you for taking action to clean up this serious threat to public health through the Environmental Protection Agency's proposed Power Plant Air Toxics Rule. This rule will save thousands of lives and avoid tens of thousands of illnesses through the use of available and cost-effective pollution controls.

Toxic air pollution from power plants remains a major unregulated source of air pollution in the United States. According to EPA's National Emissions Inventory, power plants emit 84 hazardous air pollutants and are the single largest source of mercury, hydrochloric acid and arsenic releases into the air. These plants emit 386,000 tons of hazardous air pollution annually.

EPA estimates that the Power Plant Air Toxics Rule will prevent the release of 91% of the mercury in coal, reduce emissions of acid gases from power plants by 91%, and cut sulfur dioxide emissions from power plants by 53%, as well as reducing many other hazardous air pollutants.

As a result of these reductions, the Power Plant Air Toxics Rule will save up to 17,000 lives every year. It will also prevent 11,000 heart attacks and 120,000 asthma attacks annually, prevent 12,200 hospital admissions and emergency room visits, and avoid 850,000 lost work days annually. These and other serious adverse health effects can occur hundreds of miles downwind of a power plant or in adjacent communities. Low-income and diverse communities of color often are especially impacted by these toxic emissions, and children and senior citizens are our most vulnerable populations. EPA estimates that the rule will provide up to \$140 billion each year in health benefits and that for every dollar spent to reduce this pollution, we will receive \$5-\$13 in health benefits.

Pollution control technology to meet these requirements is already being used by hundreds of power plants across the nation. New technology promises to provide the needed reductions at far lower costs than were previously estimated. A recent analysis by the Political Economy Research Institute at the University of Massachusetts, Amherst, estimated that 1.46 million jobs, or about 290,000 jobs on average in each of the next five years, would be created by capital

investments in pollution controls and construction of new plants as the country transitions to a cleaner, modernized generation fleet.

For more than 40 years, the Clean Air Act has protected public health and strengthened America's economy. We encourage you to build on this record of success by reducing toxic air pollution from power plants.

Sincerely,

Lois Capps

Petie Wassner

Gary S. Ackerman

Steven A. Rothman

David V. Guterman

Lynne Woolsey

Jim Moran

Paul Shuman

Glenn H. Stenerson

Edward J. Markey

George Miller

Ben Ray Lujan

Barbara Lee

Robert C. Byrd

Ben Ray Lujan

Eliot L. Engel

Pat Roberts

John W. Oliver

Marcia L. Judge

Red Parker

Russ Kelt

Judy Allen

Maryanne Watson

Carolyn B. Maloney

Alce L. Hastings

Lupe M. Suarez

Rosa DeLamo

Gene Jackson

John Long Jr.

Jim McDaniel

Steve Cohen

Emil Rine

Keith Elmer

Frank Royal Allard

Steve S. Lynd

Charles B. Rangel

Bill Pasarelli

Wm Jacy Clay

Anda J. Gunn

Bob Fitch

Michael H. Richard

Dan Zepke

Betty McElmer

Michael M. Honda

Chi Van Hollen

Hank Green

Mazie K. Hirose

Zee Loff

Chell R
Campbell

Allyson J. Schwartz

Mika Orwig

Grace J. Napolitano

Rail M. Hijah

Earl Bluman

John B. La

John C. Carney

Michael E. Caputo

Pat Wink

Dan Bickel

Jerry McHenry

Betty Day

Sam Fan

Loretta Sanchez

Just Folio
Paul A. Tenko

Shelley Berkley
L F

Doris O. Matsui

Anna G. Schoor

Frank Pallouf.

David N. Cicilli

Jim Langwin
Cm7

Louise M. Slaughter

Daniel Price

Jim McFann
M H

Pete Hov

John Tamandi

Jackie Spin

Howard Doyett

Arnold E. Cannolly

Jim Hin

Phil Brady

Ed Pastor

Thy M. Velazquez

John F. Ting

Maurice Dind

Dennis J. Kucmich

Sonia Adette

Arnold Nadler

Edith E. Cummings

Gregory Mueh

Joe E. Senant

Ken A. Warkner

JLP. Bl

Steve Israel

Charles

Celine Brown

Howard L. Berman

Abraham F. Edel

John Lewis

Karen R. Pass

Signature Page

Page 2

Lois Capps	Jan Schakowsky
Debbie Wasserman Schultz	Edward Markey
Gary Ackerman	George Miller
Steven Rothman	Bobby Rush
Luis Gutierrez	Barbara Lee
Lynn Woolsey	Robert Andrews
Jim Moran	Barney Frank
Brad Sherman	Eliot Engel
Eleanor Holmes Norton	Peter DeFazio

Page 3

John Oliver	Jim McDermott
Marcia Fudge	Steve Cohen
Ted Deutch	Emanuel Cleaver
Rush Holt	Keith Ellison
Judy Chu	Lucille Roybal-Allard
Maxine Waters	David Wu
Carolyn Maloney	Stephen Lynch
Alcee Hastings	Charles Rangel
Nita Lowey	Bill Pascrell, Jr.
Rosa DeLauro	William Lacy Clay
Jesse Jackson, Jr.	Linda Sanchez
John Conyers	Bob Filner

Page 4

Michael Michaud	Grace Napolitano
Daniel Lipinski	Raul Grijalva
Betty McCollum	Earl Blumenaur
Michael Honda	John Larson
Chris Van Hollen	John Carney
Hank Johnson	Michael Capuano
Mazie Hirono	Peter Welch
Zoe Lofgren	Laura Richardson
Chellie Pingree	Jerry McNerney
Xavier Becerra	Robert Scott
Allyson Schwartz	Sam Farr
Mike Quigley	Loretta Sanchez

Page 5

Jared Polis	Jim McGovern
Paul Tonko	Martin Heinrich
Shelley Berkeley	Pete Stark
Colleen Hanabusa	John Garamendi
Doris Matsui	Jackie Speier
Anna Eshoo	Lloyd Doggett

Frank Pallone, Jr.	Gerald Connolly
David Cicilline	Jim Himes
Jim Langevin	Robert Brady
Christopher Murphy	Ed Pastor
Louise Slaughter	Nydia Valazquez
David Price	John Tierney

Page 6

Maurice Hinchey	John Sarbanes
Dennis Kucinich	Steve Israel
Diana DeGette	Jay Inslee
Jerrold Nadler	Corrine Brown
Elijah Cummings	Howard Berman
Gregory Meeks	Donna Edwards
Jose Serrano	John Lewis
Henry Waxman	Karen Bass



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

AUG - 5 2011

The Honorable Edward Markey
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Markey :

Thank you for your letter of June 21, 2011, co-signed by 105 of your colleagues, to the U.S. Environmental Protection Agency in which you stated your support for the proposed "National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units" (the Mercury and Air Toxics Standards rule), which was published in the *Federal Register* on May 3, 2011. The Administrator asked that I respond on her behalf.

We sincerely appreciate your support for the proposed rule. The EPA remains committed to protecting public health as required by the Clean Air Act. By updating the public health safeguards to reduce mercury, acid gasses, and other life-threatening pollutants in our air, the EPA is protecting families from illness and premature deaths. Toxic air pollutants like mercury from coal- and oil-fired power plants can cause neurological damage, especially in young children, reducing their IQ and impairing their ability to learn. In addition to mercury, the proposed standards would also reduce emissions of other toxic metals like arsenic, chromium and nickel that are known or suspected carcinogens. These toxic pollutants contribute to fine particle pollution, which can cause premature death, and heart disease, aggravate asthma, and contribute to missed days of work and school due to illness.

Improved air quality from reduced power plant emissions would provide up to \$140 billion annually in public health benefits. These benefits are especially important for minority and low-income populations that are disproportionately affected by asthma and other debilitating health conditions. The proposed standards would also keep people working and avoiding sick days while enhancing productivity, and creating thousands of high-quality American jobs. EPA estimates the proposed rule would support 31,000 short-term construction jobs and 9,000 long-term utility jobs as pollution control equipment is manufactured, installed, maintained, and operated on an ongoing basis.

Again, thank you for your letter and your support. This letter will be placed in the public docket for this rulemaking. If you have any further questions, please contact me or your staff may call Cheryl Mackay in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2023.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy", with a large, sweeping flourish at the end.

Gina McCarthy
Assistant Administrator



AL-11-001-9525

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 18 2012

OFFICE OF
AIR AND RADIATION

The Honorable Edward J. Markey
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter of November 15, 2011, to President Obama, co-signed by 110 of your colleagues, regarding the U.S. Environmental Protection Agency and National Highway Traffic and Safety Administration's (NHTSA) recent joint proposed rule for fuel economy and greenhouse gas (GHG) emissions standards for model year 2017 to 2025 passenger cars and light trucks. This proposed rule was signed on November 16, 2011. We appreciate your support and value your interest in these standards, and have added your letter to our administrative docket for the rulemaking.

The proposed rule would provide auto manufacturers with the certainty needed to make long-term investments in technology and build advanced technology vehicles. Also, continuing the National Program would ensure that all manufacturers can build a single fleet of U.S. vehicles that would satisfy the requirements of both the Federal and California programs, thus helping to reduce costs and regulatory complexity while providing significant energy security and environmental benefits.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Diann Frantz in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3668.

Sincerely,

A handwritten signature in black ink, which appears to read "Gina McCarthy", is written over the typed name.

Gina McCarthy
Assistant Administrator



AL-12-001-4871
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP - 7 2012

THE ADMINISTRATOR

The Honorable Ed Markey
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Markey:

I am pleased to renew the charter of the Good Neighbor Environmental Board in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Good Neighbor Environmental Board is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The committee will be in effect for two years from the date the charter is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina J. Moody in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa P. Jackson", written over a horizontal line.

Lisa P. Jackson

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

GOOD NEIGHBOR ENVIRONMENTAL BOARD

1. **Committee's Official Designation (Title):**

Good Neighbor Environmental Board

2. **Authority:**

This charter renews the Good Neighbor Environmental Board (GNEB) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The GNEB is in the public interest, and is specifically directed under Section 6 of the Enterprise for the Americas Initiative Act, 7 U.S.C. Section 5404.

The authority of the President under this section to establish an advisory board to be known as the Good Neighbor Environmental Board is delegated to the Administrator of the Environmental Protection Agency (EPA), pursuant to Section 10 of Executive Order 12916, May 13, 1994.

3. **Objectives and Scope of Activities:**

The GNEB will provide advice, information and recommendations on the need for implementation of environmental and infrastructure projects "within the States of the United States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border."

4. **Description of Committee's Duties:**

The duties of the GNEB are solely to provide advice.

5. **Official(s) to Whom the Committee Reports:**

The GNEB advises the President or his delegatee and also may provide advice to Congress through the President or his delegatee.

6. **Agency Responsible for Providing the Necessary Support:**

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Federal Advisory Committee Management and Outreach, within the Office of the Administrator.

7. Estimated Annual Operating Costs and Work Years:

The estimated annual operating cost of GNEB is \$425,000 which includes 1.5 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

The committee expects to meet approximately three (3) times a year. Meetings may occur approximately once every four (4) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the GNEB will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection (c) of Section 552b of Title 5, U.S.C. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the GNEB.

10. Duration and Termination:

This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

The GNEB will be composed of approximately 25 members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from the United States Government, including the Department of Agriculture; tribal government; governments of the States of Arizona, California, New Mexico, and Texas; and private organizations, including community development, academic, health, environmental, and other non-governmental entities.

12. Subgroups:

EPA, or the GNEB with EPA's approval, may form GNEB subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the GNEB for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the President.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

August 10, 2012

Agency Approval Date

SEP - 7 2012

Date Filed with Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AL-12-000-4401

MAR - 9 2012

THE ADMINISTRATOR

The Honorable Ed Markey
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Markey:

I am pleased to renew the charter of the Environmental Financial Advisory Board in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Environmental Financial Advisory Board is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The board will be in effect for two years from the date the charter is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Clara Jones in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3701.

Sincerely,

A handwritten signature in black ink, which appears to read "Lisa P. Jackson", is written over the word "Sincerely,".

Lisa P. Jackson

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

ENVIRONMENTAL FINANCIAL ADVISORY BOARD

1. Committee's Official Designation (Title):

Environmental Financial Advisory Board

2. Authority:

This charter renews the Environmental Financial Advisory Board (EFAB) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 and relevant Agency policies. The EFAB is in the public interest and supports EPA in performing its duties and responsibilities.

3. Objectives and Scope of Activities:

There are many critical environmental financing issues facing our nation. Environmental legislation places significant additional resource requirements on all levels of government, increasing their infrastructure and administrative costs. At the same time, limited budgets and economic challenges have constrained traditional sources of capital. Growing needs and expectations for environmental protection, as well as increasing demands in all municipal service areas, make it difficult for state and local governments to find the resources to meet their needs. The resulting strain on the public sector challenges the quality and delivery of environmental services.

The major objectives are to provide policy advice and recommendations on:

- a. Reducing the cost of financing sustainable environmental facilities, discouraging polluting behavior, and encouraging stewardship of natural resources;
- b. Creating incentives to increase private investment in the provision of environmental services and removing or reducing constraints on private involvement imposed by current regulations;
- c. Developing new and innovative environmental financing approaches and supporting and encouraging the use of cost-effective existing approaches;
- d. Identifying approaches specifically targeted to small community financing;

- e. Assessing government strategies for implementing public-private partnerships, including privatization and operations and maintenance issues, and other alternative financing mechanisms;
- f. Improving governmental principles of accounting and disclosure standards to help improve sustainability of environmental programs;
- g. Increasing the capacity issue of state and local governments to carry out their respective environmental programs under current Federal tax laws;
- h. Increasing the total investment in environmental protection and stewardship of public and private environmental resources to help ease the environmental financing challenge facing our nation; and
- i. Removing barriers and increasing opportunities for the U.S. financial services and environmental goods and services industries in other nations.

4. Description of Committee's Duties:

The duties of the EFAB are solely to provide advice to EPA.

5. Official(s) to Whom the Committee Reports:

The EFAB will submit advice and recommendations and report to the EPA Administrator, through the Office of the Chief Financial Officer.

6. Agency Responsible for Providing the Necessary Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of the Chief Financial Officer.

7. Estimated Annual Operating Costs and Work Years:

The estimated annual operating cost of the EFAB is \$559,000 which includes 4.5 work years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the DFO. The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

EFAB expects to meet approximately two (2) times a year. Meetings may occur approximately once every six (6) months or as needed and approved by the Designated Federal Officer (DFO). EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the EFAB will hold open meetings unless the Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of section 552b of title 5, United States Code. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the EFAB.

10. Duration and Termination:

EFAB will be examined annually and will exist until the EPA determines the committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After the initial two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

The EFAB will be composed of approximately thirty (30) members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Members are selected to represent the points of view held by specific organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from all levels of government, including elected officials; the finance, banking, and legal communities; business and industry; and local, national and non governmental organizations.

12. Subgroups:

EPA, or the EFAB with EPA's approval, may form subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the EFAB for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

February 24, 2012

Agency Approval Date

March 6, 2012

GSA Consultation Date

MAR -9 2012

Date Filed with Congress

AL-12-000-0597

COMMITTEES
NATURAL RESOURCES
RANKING DEMOCRAT
ENERGY AND COMMERCE

EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS

2108 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2107
(202) 225-2838

Congress of the United States
House of Representatives
Washington, DC 20515-2107

DISTRICT OFFICES:
5 HIGH STREET, SUITE 101
MEDFORD, MA 02155
(781) 396-2900
188 CONCORD STREET, SUITE 102
FRAMINGHAM, MA 01702
(508) 875-2900
<http://markey.house.gov>

January 10, 2012

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Ariel Rios Building
Washington, DC 20460

Dear Administrator Jackson:

I thank you for your attention to the environmental and public health issues related to the chemical dioxin over the past three years, and for making the release of the EPA's long-delayed 'Dioxin Reassessment' a priority of your leadership. This scientific assessment of dioxin's health impacts is important so that any additional steps to protect the public from one of the most toxic chemicals known to science can be taken. The release of EPA's latest TRI (Toxic Release Inventory) analysis indicates that total disposal or other releases of dioxin increased from 2009-2010. According to EPA's analysis, air releases of dioxin rose 10 percent from 2009 to 2010 and total disposal or other releases, such as landfill disposal, increased 18 percent. The increase of dioxin in the environment only further supports the need for immediate steps to be taken to protect the public from this dangerous chemical. Therefore, I strongly urge you to move swiftly in releasing the full scientific assessment of dioxin's health impacts.

Dioxin causes a wide array of adverse health effects and in addition to being associated with increased risk of cancer; dioxin is also linked to reproductive, developmental, immunological, and hormonal impacts in both animals and humans. On April 11, 2011, I along with 72 other members of Congress wrote to you expressing deep concern that the EPA's Dioxin Reassessment has been delayed time and time again for more than 20 years.¹ Since we wrote to you, the EPA's Science Advisory Board (SAB) issued their final report on August 26, 2011, which reviewed 'EPA's Reanalysis of Key Issues Related to Dioxin Toxicity and Response to NAS Comments.'² This reanalysis was first issued in May 2010 and it was my understanding that the SAB's review of this document was to be among the final steps in the Dioxin Reassessment process. On August 29, 2011, EPA announced its final plan for completing the Dioxin Reassessment.³ EPA committed to completing the portion of the reassessment relating to non-cancer health impacts and posting it to the IRIS⁴ database (an EPA database containing information on human health effects resulting from exposure to various environmental substances) by the end of January 2012 and to then complete the cancer portion of the reanalysis "as quickly as possible." EPA stated that once the Agency completes both the non-cancer and cancer portions of the reanalysis, the Dioxin Reassessment would be considered final.

¹ http://markey.house.gov/index.php?option=com_content&task=view&id=4301&Itemid=141

² [http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/9DE6A0825A9C050F85257412005EA22A/\\$File/Dioxin+-+Main+Text+-+SAB-ERD.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/9DE6A0825A9C050F85257412005EA22A/$File/Dioxin+-+Main+Text+-+SAB-ERD.pdf)

³ <http://cfpub.epa.gov/ncea/cfm/recorddisplay.cfm?deid=209690>

⁴ IRIS: Integrated Risk Information System

I am very concerned that the American Chemistry Council (ACC) and other impacted industry sectors are now pressuring EPA to further delay the release of this important document. In the recent fiscal year 2012 omnibus (H.R. 2055) Congress included text that stated *"For draft assessments released in fiscal year 2012, the Agency shall include documentation describing how the Chapter 7 recommendations of the National Academy of Sciences (NAS) have been implemented or addressed, including an explanation for why certain recommendations were not incorporated."*

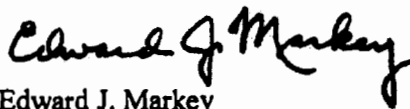
Recently the ACC, sent a letter to you asking for the Dioxin Reassessment to be further delayed.⁵ In this letter the ACC has inaccurately characterized this omnibus rider language stating that, "to comply with Congress's direction, EPA should withdraw the dioxin assessment from interagency review and take the necessary steps to implement the NAS recommendations."

This is a significant misinterpretation of the provision that was enacted. The Dioxin Reassessment was not released in draft form in fiscal year 2012, and therefore this stipulation does not apply to the EPA's Dioxin Reassessment. The EPA's draft dioxin health assessment report was written in 1985, with revised drafts issued in 1994, 2000, and 2003. Since then, the Dioxin Reassessment has been in the final stages for close to nine years. In addition, in 2006, the National Academy of Sciences (NAS) issued a very detailed report reviewing the EPA's Dioxin Reassessment. Since the NAS issued its report, the EPA issued a response to the NAS report and formed a Science Advisory Board to review the EPA's response to the NAS. Prior to that, the EPA had formed three separate science advisory review panels in 1988, 1995, and 2001 to review the draft dioxin report. Additional reviews are not necessary, would be an extreme waste of government resources, are not called for by the omnibus language, and would only serve to further delay the completion of this important public health document.

Therefore, I am writing to strongly urge you to reject industry's call for further delays and meet your schedule of finalizing the non-cancer portion of the dioxin reanalysis by the end of this month and to finalize the cancer portion as quickly as possible thereafter, as you have pledged. The American public has been waiting for the completion of this dioxin study since 1985 and cannot afford any further delays.

Thank you for your attention to these concerns and for your commitment to protecting human health and the environment.

Sincerely,



Edward J. Markey

cc: Cass Sunstein, Administrator, Office of Information and Regulatory Affairs
Nancy Sutley, Chair, White House Council on Environmental Quality (CEQ)
Paul Anastas, Assistant Administrator, Office of Research and Development, EPA
Rebecca Clark, Acting Director, National Center for Environmental Assessment, EPA

⁵ <http://www.americanchemistry.com/Policy/Regulatory-Reform/ACC-Letter-to-Administrator-Jackson-re-IRIS-41911.pdf>



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR - 2 2012

OFFICE OF
RESEARCH AND DEVELOPMENT

The Honorable Edward J. Markey
United States House of Representatives
Washington, DC 20515

Dear Congressman Markey:

Thank you for your letter dated January 10, 2012 to Lisa P. Jackson, Administrator of the U.S. Environmental Protection Agency (EPA), regarding the EPA's Integrated Risk Information System (IRIS) program and the draft IRIS *Reanalysis of Key Issues Related to Dioxin Toxicity and Response to NAS Comments* (draft dioxin reanalysis). Because the Office of Research and Development is responsible for the IRIS program, your letter was referred to me for response.

I am pleased to report that on February 17, 2012, the EPA completed the noncancer portion of the dioxin Reanalysis (Volume 1) and posted it to the IRIS database. This important Agency achievement represents the culmination of a decades-long process that included multiple opportunities for public and stakeholder involvement and multiple rounds of rigorous, independent expert peer review. The process followed in developing the dioxin Reanalysis exemplifies the Agency's commitment to scientific rigor, expert input, public and stakeholder engagement, and independent expert peer review.

The "Consolidated Appropriations Act", H.R. 2055, states that "for draft assessments released in fiscal year 2012, the Agency shall include documentation describing how the Chapter 7 recommendations of the NAS report have been implemented or addressed, including an explanation for why certain recommendations were not incorporated." This language is specific to draft – not final – assessments released in fiscal year 2012, and therefore is not applicable to the release of the final dioxin reanalysis.

Again, thank you for your letter. If you have any further questions, please contact Laura Gomez in the EPA's Office of Congressional and Intergovernmental Relations at 202-564-5736.

Sincerely,

A handwritten signature in black ink, appearing to read "Lek Kadeli", is written over the word "Sincerely,".

Lek Kadeli

Acting Assistant Administrator

Congress of the United States
Washington, DC 20515

July 25, 2011

Ms. Lisa Jackson, Administrator
Ms. Gina McCarthy, Assistant Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson and Assistant Administrator McCarthy:

We are writing to express our gratitude and support for your work to maintain current funding levels for Clean Air Act Section 105 air quality assistance grants for the Region I states. However, we are concerned that, once implemented, the new air grant funding formula will be extremely detrimental to the states that we represent.

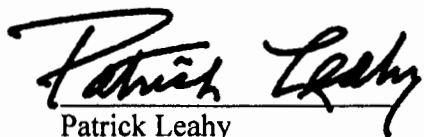
As you know, New England's state air programs are some of the strongest and most effective in the nation, with some of the toughest emissions limits for cars, the most stringent trash incinerator rules, and strict mercury controls, as well as our Regional Greenhouse Gas Initiative (RGGI). These programs have also been designed to compensate for the significant air pollution transport our region receives from the Southeast and Midwest, as many other regions have not taken steps to improve air quality unless required to by federal programs.

Under the revised Section 105 state air grant funding formula, it is estimated that Region I states could lose up to 27 percent of our annual funding. In order to continue to implement these strong standards and effective programs, continued funding is necessary and, at a time when many of our states are facing budget shortfalls, a cut of 27 percent would be harmful to these important initiatives. In FY2010 alone New England state environmental agencies have had to cut 176 staff and leave 109 positions vacant resulting in not only a smaller workforce to execute these programs, but also a loss of jobs during a time of high unemployment.

We understand the difficult budget circumstances that EPA is currently facing and, because of that, we respectfully request that you not begin implementation of the new state air grant funding formula until there is an increase in overall funding for the account to ensure that there will be no net losses for Region I or any region.

Thank you for your attention to this important matter. We look forward to your response.

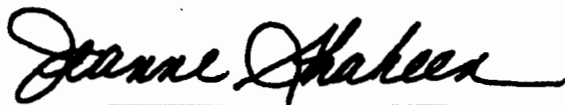
Sincerely,



Patrick Leahy
United States Senator



Bernard Sanders
United States Senator



Jeanne Shaheen
United States Senator



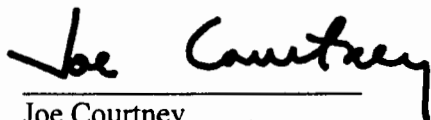
Sheldon Whitehouse
United States Senator



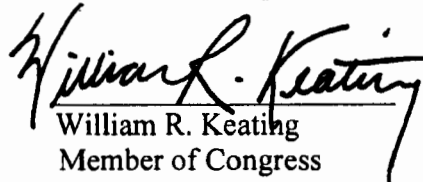
Rosa L. DeLauro
Member of Congress




David N. Cicilline
Member of Congress



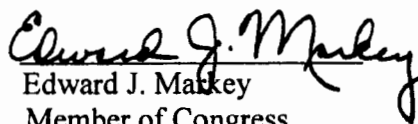
Joe Courtney
Member of Congress



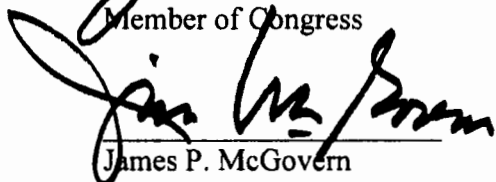
William R. Keating
Member of Congress



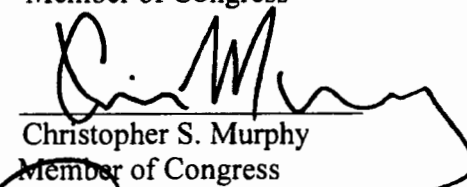
John B. Larson
Member of Congress



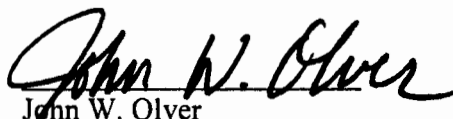
Edward J. Markey
Member of Congress



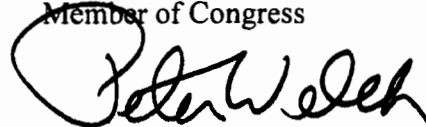
James P. McGovern
Member of Congress



Christopher S. Murphy
Member of Congress



John W. Olver
Member of Congress



Peter Welch
Member of Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 31 2011

OFFICE OF
AIR AND RADIATION

The Honorable Edward J. Markey
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

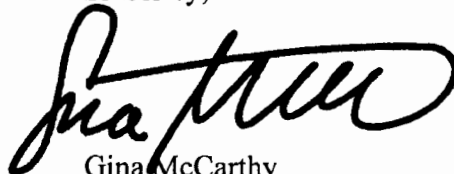
Thank you for your letter of July 25, 2011, co-signed by 13 of your colleagues, regarding the Environmental Protection Agency's reconsideration and update of the formula to allocate grant funds that support the nation's state and local continuing air programs. We recognize that adequate support to state and local air quality agencies is critical for the effective implementation of the Clean Air Act and the protection of the public health. This is evidenced by the significant air quality improvements achieved through the efforts of these agencies in New England.

The EPA believes that an increase and realignment in funding is necessary to enable state and local air quality agencies to adequately address the air pollution and public health challenges that we continue to face. The Agency had revised and proposed an updated approach for allocating funds for Clean Air Act Section 105 grants in anticipation of receiving a significant increase in grant funding for state and local air quality agencies in FY 2011. The EPA's proposed approach would still have delivered increased support to the New England states. When the requested increase was not forthcoming, we did not move forward to implement the revised approach.

The EPA has stated that without increased state and local funding, it will not make any adjustments to the current allocation approach until FY 2013, and at that time would begin a gradual transition to a revised approach. This will enable us to move towards an allocation approach that addresses the air quality and public health challenges of the 21st century in a way that is as sensitive as possible to all regions of the country. We will incorporate the latest air quality and health risk information available to us. We will also ensure that the operations of state and local agencies are not disproportionately compromised. During the transition period, if Congress increases state and local funding we will reassess our approach.

We look forward to continuing to work with you and your state and local air quality agencies on this matter. If you have any further questions, please contact me or your staff may call Diann Frantz in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3668.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy", with a large, sweeping flourish at the end.

Gina McCarthy
Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AL-10-001-6266
NI

SEP 28 2010

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Edward J. Markey
Chairman
Select Committee on Energy Independence
and Global Warming
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This letter is in response to your recent request to extend the detail assignment of Ms. Shannon Kenny, an employee of the Environmental Protection Agency (EPA), to the Select Committee on Energy Independence and Global Warming through December 31, 2010. We are pleased to allow Ms. *Shannon* this opportunity and expect her to return to EPA on January 4, 2011.

If you have any questions, please contact me or have your staff contact Clara Jones in my office at (202) 564-3701.

Sincerely,

A handwritten signature in black ink, appearing to read "David McIntosh", is written over the typed name.

David McIntosh
Associate Administrator

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER

ONE HUNDRED ELEVENTH CONGRESS **AL-10-000-7818**
Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

Majority (202) 225-2927

Minority (202) 225-3641

May 17, 2010

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson,

I write to request information regarding the use of dispersants to mitigate the effects of the catastrophic release of millions of gallons of crude oil into the Gulf of Mexico following the explosion aboard the Deepwater Horizon drilling rig. While the estimates of the amount of oil released daily has increased significantly since the explosion and remains under question, what is certain is that the inability of BP to quickly stop the leak is leading to an environmental catastrophe, placing fragile ecosystems, wildlife and the region's economy in peril. The release of hundreds of thousands of gallons of chemicals into the Gulf of Mexico could be an unprecedented, large and aggressive experiment on our oceans. It requires careful oversight by the Environmental Protection Agency (EPA) and other appropriate federal agencies.

As a measure to mitigate the impact of the oil spill, the EPA recently granted BP authorization to use chemical dispersants, which are a detergent-like brew of solvents, surfactants and other compounds that break down oil into tiny particles that then scatter and sink into the sea. To date, over half a million gallons of dispersants have been used in the Gulf of Mexico. Just two days ago, the EPA and US Coast Guard authorized BP to apply these dispersants at the site of the leak, over one mile below the ocean surface, a practice that has never been authorized before.

The information regarding the chemical composition, efficacy and toxicity of the dispersants currently being used is scarce. Additionally, recent articles¹ have raised questions regarding both the relative safety and efficacy of the dispersant selected for use by BP, suggesting that other

¹ Less Toxic Dispersants Lose Out in BP Oil Spill Cleanup, Greenwire, May 13, 2010, Spills Ills Could be Found Under the Water, Wall Street Journal (online), May 17, 2010

formulations may have been more suited for use in the Gulf of Mexico. In light of the volume of oil that has spewed into the Gulf of Mexico and the apparent inability of BP to quickly stop its flow, I understand that other mitigating options must be explored in order to keep as much oil as possible from reaching land. However, I am concerned about the risks and consequences, and in order to understand better what actions the EPA is taking in this area, I ask that you respond to the following questions:

1. It is my understanding that the main dispersants applied so far are from a product line called Corexit, some of which had their approval rescinded in Britain more than a decade ago², because laboratory tests found them harmful to sea life that inhabits rocky shores.
 - a. How did EPA ensure that this dispersant's toxicity to aquatic life was evaluated?
 - b. Was its toxicity to mollusks and other sea life that inhabit the Gulf of Mexico coast evaluated, and if so, what were the results? If not, why not?
 - c. If EPA relied on toxicity studies for coastal morphologies different from that of the Gulf Coast, what was done to evaluate the applicability of those studies for the use of the dispersants in the Gulf of Mexico environment?
 - d. Was the toxicity to other subsurface aquatic life evaluated? If so, please provide details, and if not, why not?
2. How is EPA tracking the volume of dispersants being used both in both surface and subsurface applications? How does EPA plan to determine whether their use causes harm to the aquatic ecosystem they come into contact with?
3. Is EPA fully aware of all chemical constituents contained within the two formulations of Corexit dispersants currently being used? If so, please provide a list of each such constituent.
4. Did EPA ensure that tests were conducted to evaluate the efficacy and toxicity of the 18 dispersants it has approved for use? What were the results of the tests?
 - a. Did EPA rank the dispersants in terms of efficacy (in dispersing the sort of crude oil that is spewing into the Gulf of Mexico) and toxicity (to the sort of aquatic life contained in the Gulf of Mexico), as was asserted by the May 13 2010 article in Greenwire?³ If so, please provide this ranking. If not, why not?
 - b. Does EPA instruct entities who wish to use dispersants to use the most effective and least toxic dispersants in a particular operation? If so, then did EPA instruct BP to use Corexit? If not, does EPA lack the authority to prescribe the use of specific formulations?
 - c. Does EPA expect users of dispersants to themselves examine the safety and efficacy data that is applicable to the conditions of intended use and select the least toxic and most effective approved formulation?

² http://www.marinemanagement.org.uk/protecting/pollution/documents/approval_approved_products.pdf

³ Less Toxic Dispersants Lose Out in BP Oil Spill Cleanup, Greenwire, May 13, 2010

- d. Please provide copies of all documents, emails and other correspondence related to BP's use of dispersants in response to the Deepwater Horizon catastrophe.
5. How do water temperature and pressure effect the degradation of dispersants?
 - a. Will the fact that the water temperature at the Deepwater Horizon leak is just above freezing affect the time it takes for the molecules to be degraded? If so, please elaborate.
 - b. Have studies been performed to assess the efficacy or toxicity of the compounds at freezing temperatures? What are the results of these studies?
 - c. How does the high pressure at the depth of the leaking wellhead affect where chemical dispersants and oil molecules spread in the water column? Does high pressure also affect the rate of degradation of oil and chemical molecules, and if so, how?
6. What information has EPA collected about the long-term effects of dispersants accumulating in sediment at the bottom of the ocean floor? Please provide these materials to me. If no such information has been collected, then why did EPA approve their use at the ocean floor? What effect could the accumulation of large volumes of dispersants on the ocean floor have on bottom-feeding organisms such as shrimp?
7. Has EPA determined whether chemical dispersants can accumulate in the tissue of fish and other aquatic life (including plants and un-hatched eggs) in the same or similar manner as other toxic materials such as mercury? If so, please provide documentation regarding what accumulations are likely, including materials regarding the implications for human health if the fish are consumed. If not, why not?
8. Did EPA consider a variety of scenarios for the interaction of the dispersants with the oil plume when applied at the depth of the Deepwater Horizon leak? If not, why not? Did any scenarios considered include the formation of large underwater plumes at various depths, as appears to have occurred based on a preliminary scientific investigation as reported Sunday?⁴ If so, please provide all related documents. How does EPA plan on monitoring the long-term effect that these chemical dispersants have on aquatic life in the Gulf of Mexico?
9. Is EPA aware of the ecological impacts of simultaneously using different formulations of dispersants during the mitigation efforts? Does the combination of chemicals change the toxicity or efficacy of the dispersant? If so, please provide documentation.
10. Given the start of the Atlantic hurricane season on June 1, did EPA consider the impact of the dispersants on marine life in a rapidly mixed water column should a hurricane develop in the Gulf of Mexico? If so, what did EPA determine? If not, why not?
11. EPA has stated that although it has approved the use of chemical dispersants on surface and subsurface applications it "reserves the right to halt the use of chemical dispersants at

⁴ Giant Plumes of Oil Forming Under the Gulf, The New York Times, May 16, 2010

any time if new data show more serious environmental harm is occurring." How is EPA monitoring environmental harm? What metrics or other problems does EPA consider to be cause for halting use of chemical dispersants?

Thank you for your assistance and cooperation in responding to this request. Should you have any questions, please have your staff contact Dr. Michal Freedhoff of the Subcommittee staff or Dr. Avenel Joseph of my staff at 202-225-2836.

Sincerely,



Edward J. Markey

Chairman

Subcommittee on Energy and Environment

cc: The Honorable Henry A. Waxman
Chairman, House Energy and Commerce Committee

The Honorable Joe Barton
Ranking Member, House Energy and Commerce Committee

The Honorable Fred Upton
Ranking Member
Subcommittee on Energy and Environment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 27 2010

THE ADMINISTRATOR

The Honorable Edward J. Markey
Chairman
Subcommittee on Energy and Environment
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your May 17, 2010 letter requesting information from the U.S. Environmental Protection Agency (EPA) relating to the use of dispersants in the Gulf of Mexico following the April 20, 2010 Deepwater Horizon mobile offshore drilling unit explosion and resulting oil spill. Since these events, the Administration's efforts have focused on responding to the disaster and ensuring that BP, the responsible party, stops the discharges, removes the oil, and pays for all costs and damages. EPA is a key part of those efforts.

EPA chairs the National Response Team (NRT) and co-chairs the Regional Response Teams (RRT), comprised of several federal and state stakeholders with unique roles and responsibilities that contribute to decision-making for the oil spill response activities. Further, we share the responsibility for prevention and preparedness with USCG and several other federal agencies, including the National Oceanic and Atmospheric Administration (NOAA). EPA and USCG have a strong relationship and work closely on oil spill response activities regardless of where the spill occurs.

EPA recognizes and shares your concern regarding the use of large quantities of dispersants during operations to contain the spill. There are environmental trade-offs and uncertainties associated with the widespread use of extraordinary quantities of dispersants in general. The unprecedented nature of the continuous discharge of crude oil from a mile beneath the ocean surface, and the threat that oil poses to the Gulf's sensitive coastal ecosystem requires us to consider all options. Dispersants have been shown to be effective at breaking down the oil into small droplets that will more readily degrade in the marine environment and are an important tool, along with mechanical approaches and burning, for dealing with the oil in the ocean. At the same time, given the lack of scientific information about the impact of the dispersants in the circumstances and quantities for this release, EPA has worked closely with its federal partners to ensure an aggressive dispersant monitoring plan is implemented by BP and that data are regularly and rigorously reviewed.

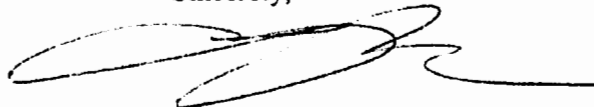
Of particular note, these efforts have resulted in significant reductions in the overall quantity of dispersants being used. The authorization of the use of dispersants subsea, where it is being applied directly to the oil at the principle leak site, has made it possible to reduce the use of surface application. Surface application is now being used as a last resort and only with specific written authorization from the Coast Guard.

EPA is responsible for maintaining the National Contingency Plan (NCP) product schedule, which lists chemical and biological products available for Federal On-Scene Coordinators (OSCs) to use in spill response and cleanup efforts. The decision to use dispersant during an oil spill incident follows a three step process:

- First, a dispersant must be listed on the NCP product schedule. Section 311(d)(2)(G) of the CWA requires that EPA prepare a schedule of dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the NCP.
- The decision to use dispersants must be made in accordance with the appropriate Regional Response Team pre-approval guidelines and checklists.
- If the RRT representatives and the Department of Commerce and the Department of Interior natural resource trustees approve in advance the use of certain products under specified circumstances as described in the preauthorization plan, the OSC, in this case the United States Coast Guard (USCG), may authorize the use of the products without obtaining the specific concurrences.

Enclosed are responses to your specific questions. Please be assured that the Agency is committed to continuing to provide full support to the USCG and the Unified Command (UC), and will continue to take a proactive and robust role in monitoring, identifying, and responding to potential public health and environmental concerns. If you have further questions or if we can be of further assistance, please don't hesitate to contact me, or your staff may contact Arvin Ganesan at (202) 564-4741.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa P. Jackson', with a long horizontal flourish extending to the right.

Lisa P. Jackson

Enclosure

1. It is my understanding that the main dispersants applied so far are from a product line called Corexit, some of which had their approval rescinded in Britain more than a decade ago, because laboratory tests found them harmful to sea life that inhabits rocky shores.

- a. How did EPA ensure that this dispersant's toxicity to aquatic life was evaluated?**
- b. Was its toxicity to mollusks and other sea life that inhabit the Gulf of Mexico coast evaluated, and if so, what were the results? If not, why not?**
- c. If EPA relied on toxicity studies for coastal morphologies different from that of the Gulf Coast, what was done to evaluate the applicability of those studies for the use of the dispersants in the Gulf of Mexico environment?**
- d. Was the toxicity to other subsurface aquatic life evaluated? If so, please provide details, and if not, why not?**

Answer: It is our understanding that the criteria and testing of a dispersant to be listed on the UK product list are technically different than the criteria that are used in the United States. Dispersants must pass two tests in the UK to be approved:

1. A "sea test" which compares the relative impact of a water/dispersant/oil mix versus a sea water and oil mixture on brown shrimp. If the impact (morbidity, lack of movement, etc.) of the dispersant mixture appears to be worse than the seawater/oil mixture, the dispersant is not approved.
2. A "rocky shore test" looks at the impact on clams associated with direct spraying of dispersant onto the spilled oil or just the oil itself. If the dispersant causes "more harm" (which could be simply that the clam loses adhesion with the rock), then that dispersant is not approved for use.

The Corexit products (9500 and 9527) passed the sea test but did not pass the rocky shore test and therefore were not listed for use in the UK. However, the UK test does not determine whether the "inherent toxicity" is the reason for failing the test; rather, the test looks at the "relative harm" associated with the dispersant.

In the United States, we require a standard test of inherent toxicity (LC50 for 48 and 96 hours) which is used to compare various dispersant products relative to a standard #2 fuel oil. In addition, dispersants are not used on shorelines in the United States. They may be used only beyond 3 miles from shore and in water that is at least 10 meters deep.

EPA required toxicity tests to standard test species, including a sensitive species of Gulf of Mexico invertebrate (mysid shrimp) and fish (silverside) which are common species in Gulf of Mexico estuarine habitats. The invertebrate and fish species tested are considered to be representative of the sensitivity of many species in the Gulf of Mexico, based on years of toxicity testing with other substances. There are additional toxicity data for

other species available in the scientific literature. The toxicity of mollusks and other sea life were not evaluated as part of the EPA required tests.

2. How is EPA tracking the volume of dispersants being used both in both surface and subsurface applications? How does EPA plan to determine whether their use causes harm to the aquatic ecosystem they come into contact with?

Answer: The volume of dispersants being used by BP in both surface and subsurface applications is being reported to the Unified Command, which includes EPA, NOAA and the Coast Guard. These Agencies are providing oversight during the sampling and analysis process, as well as data interpretation. The sampling plan includes measures of dissolved oxygen and a biological assessment (e.g., Rototox toxicity test). Such tests can are a proxy to understand impacts to aquatic ecosystems. Additional water sampling and analysis plans for the surface monitoring are currently being finalized.

3. Is EPA fully aware of all chemical constituents contained within the two formulations of Corexit dispersants currently being used? If so, please provide a list of each such constituent.

Answer: EPA is aware of the chemical constituents contained within the two formulations of Corexit dispersants currently being used., NALCO has agreed to waive their CBI claim for a combined list of constituents for both COREXIT 9500 and 9527. The following list of chemicals has been developed for distribution by EPA.

Item	CAS Registry Number	Chemical Name (TSCA Inventory)
1	57-55-6	1,2-Propanediol
2	111-76-2	Ethanol, 2-butoxy-
3	577-11-7	Butanedioic acid, 2-sulfo-, 1,4-bis(2-ethylhexyl) ester, sodium salt (1:1)
4	1338-43-8	Sorbitan, mono-(9Z)-9-octadecenoate
5	9005-65-6	Sorbitan, mono-(9Z)-9-octadecenoate, poly(oxy-1,2-ethanediyl) derivs.
6	9005-70-3	Sorbitan, tri-(9Z)-9-octadecenoate, poly(oxy-1,2-ethanediyl) derivs
7	29911-28-2	2-Propanol, 1-(2-butoxy-1-methylethoxy)-
8	64742-47-8	Distillates (petroleum), hydrotreated light

4. Did EPA ensure that tests were conducted to evaluate the efficacy and toxicity of the 18 dispersants it has approved for use? What were the results of the tests?

a. Did EPA rank the dispersants in terms of efficacy (in dispersing the sort of crude oil that is spewing into the Gulf of Mexico) and toxicity (to the sort of aquatic life contained in the Gulf of Mexico), as was asserted by the May 13 2010 article in Greenwire? If so, please provide this ranking. If not, why not?

- b. Does EPA instruct entities who wish to use dispersants to use the most effective and least toxic dispersants in a particular operation? If so, then did EPA instruct BP to use Corexit? If not, does EPA lack the authority to prescribe the use of specific formulations?**
- c. Does EPA expect users of dispersants to themselves examine the safety and efficacy data that is applicable to the conditions of intended use and select the least toxic and most effective approved formulations?**
- d. Please provide copies of all documents, emails and other correspondence related to BP's use of dispersants in response to the Deepwater Horizon catastrophe.**

Answer: EPA evaluates dispersant according to the criteria listed under 40 CFR part 300.915 which includes measure of effectiveness and toxicity. EPA provides this information on our website, but we do not rank dispersants according to those measures. The required toxicity tests for placement on the NCP includes tests on a sensitive species of Gulf of Mexico invertebrate (mysid shrimp) and fish (silverside) which are common species in Gulf of Mexico estuarine habitats. The invertebrate and fish species tested are considered to be representative of the sensitivity of many species in the Gulf of Mexico, based on years of toxicity testing with other substances.

Under the National Contingency Plan, the Federal OSC, in this case the Coast Guard, has the discretion to choose a dispersant on the NCP Product Schedule. The OSC considers the efficacy of the dispersant, environmental impacts, and availability among other things, when making this decision. On May 20, 2010, the EPA and the Coast Guard issued a directive requiring BP to identify and use a less toxic dispersant, after EPA approval, from the NCP Product List.

Additionally, EPA is currently addressing your request for documents, emails and correspondence.

- 5. How do water temperature and pressure effect the degradation of dispersants?**
- a. Will the fact that the water temperature at the Deepwater Horizon leak is just above freezing affect the time it takes for the molecules to be degraded? If so, please elaborate.**
 - b. Have studies been performed to assess the efficacy or toxicity of the compounds at freezing temperatures? What are the results of these studies?**
 - c. How does the high pressure at the depth of the leaking wellhead affect where chemical dispersants and oil molecules spread in the water column? Does high pressure also affect the rate of degradation of oil and chemical molecules, and if so, how?**

Answer: The degradation of dispersants may be influenced by many factors including temperature and mixing efficiency. The test conditions under which dispersants are approved for listing on the NCP Product Schedule are listed under 40 CFR part 300.900 and appendix C to 40 CRF part 300. EPA recognizes that application of dispersants at the source of the oil discharge in deep water is a novel application of this technology.

Thus, as indicated above, EPA and our federal partners are monitoring the subsea application of dispersants.

6. What information has EPA collected about the long-term effects of dispersants accumulating in sediment at the bottom of the ocean floor? Please provide these materials to me. If no such information has been collected, then why did EPA approve their use at the ocean floor? What effect could the accumulation of large volumes of dispersants on the ocean floor have on bottom-feeding organisms such as shrimp?

Answer: The application of dispersants to the oil discharge at the depth of the Deepwater Horizon is a unique, novel and challenging situation. The OSC considers the efficacy of the dispersant, environmental impacts, and availability among other things, when making decisions about the use of dispersants. BP has utilized both surface and subsurface dispersants. Therefore, EPA and the Coast Guard are requiring BP to implement a robust sampling and monitoring plan. EPA is constantly reviewing data to determine if the subsurface application of dispersants is adversely impacting the environment more than the oil alone. Tests with mysid shrimp and silversides are considered to be representative of a broader range of species based on tests with many substances over the years.

7. Has EPA determined whether chemical dispersants can accumulate in the tissue of fish and other aquatic life (including plants and un-hatched eggs) in the same or similar manner as other toxic materials such as mercury? If so, please provide documentation regarding what accumulations are likely, including materials regarding the implications for human health if the fish are consumed. If not, why not?

Answer: EPA has not determined whether chemical dispersants can accumulate in the tissue of fish and other aquatic life similar to mercury or other toxic materials. Results of initial testing indicate that ingredients in COREXIT, the dispersant currently being used do not appear to have bioaccumulative properties. FDA will continue to monitor the use of dispersants and evaluate any impacts to seafood.

8. Did EPA consider a variety of scenarios for the interaction of the dispersants with the oil plume when applied at the depth of the Deepwater Horizon leak? If not, why not? Did any scenarios considered include the formation of large underwater plumes at various depths, as appears to have occurred based on a preliminary scientific investigation as reported Sunday? If so, please provide all related documents. How does EPA plan on monitoring the long-term effect that these chemical dispersants have on aquatic life in the Gulf of Mexico?

Answer: The application of dispersants to the oil discharge at the depth of the Deepwater Horizon is a unique and challenging situation. The OSC considers the efficacy of the dispersant, environmental impacts, and availability among other things, when making decisions about the use of dispersants.

Regarding recent media reports of underwater plumes, NOAA has stated that the research team has not reached any definitive conclusion about the composition of the undersea layers they discovered. Characterization of these layers will require analysis of samples and calibration of key instruments. The hypothesis that the layers consist of oil remains to be verified.

EPA plans to significantly increase our research on the potential human and environmental risks and impacts of the release of crude oil and the application of dispersants, surface washing agents, bio-remediation agents, and other mitigation measures. An additional funding request for this research was included in the Administration's recent legislative submission related to the BP oil spill.

9. Is EPA aware of the ecological impacts of simultaneously using different formulations of dispersants during the mitigation efforts? Does the combination of chemicals change the toxicity or efficacy of the dispersant? If so, please provide documentation.

Answer: EPA is not aware that different dispersants have not been used simultaneously in this response, although initially there was some overlap of the use of both of COREXIT 9500 and 9527.

10. Given the start of the Atlantic hurricane season on June 1, did EPA consider the impact of the dispersants on marine life in a rapidly mixed water column should a hurricane develop in the Gulf of Mexico? If so, what did EPA determine? If not, why not?

Answer: EPA is a part of the RRT and the NRT (National Response Team) which are comprised of various federal agencies with unique roles and responsibilities that contribute to decision-making for all response efforts. We are working together to evaluate the constantly changing conditions in the Gulf of Mexico, including impacts of hurricane season and the impact of dispersants on the aquatic environment.

11. EPA has stated that although it has approved the use of chemical dispersants on surface and subsurface applications it "reserves the right to halt the use of chemical dispersants at any time if new data show more serious environmental harm is occurring." How is EPA monitoring environmental harm? What metrics or other problems does EPA consider to be cause for halting use of chemical dispersants?

Answer: As part of the RRT, EPA is monitoring several factors at various depths including conductivity, temperature, and depth (CTD). The monitoring utilizes several techniques including:

- Fluorometer

- Laser In Situ Scattering and Transmissometry (LISST) Particle Analysis
- Dissolved Oxygen
- Water sampling from surface to 550 meters for PAH analysis
- Aerial Visual Observation
- Rototox toxicity testing (subsurface only)
- UV-Fluorescence testing

On a daily basis, EPA is evaluating all the data generated by the tests above and makes a daily decision on whether to proceed with subsurface application.

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives

AL-10-006-6201
NO

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

April 22, 2010

The Honorable Lisa P. Jackson
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

I am writing to request your testimony at a hearing before the Subcommittee on Energy and Environment on Wednesday, April 28, 2010, at 9:30 a.m. in Room 2123 of the Rayburn House Office Building. The hearing is entitled, "Clean Energy Policies That Reduce Our Dependence on Oil." This hearing will focus on existing and future policies to reduce our dependence on oil, including the recent Environmental Protection Agency tailpipe rule.

The Subcommittee solicits your testimony on issues relevant to this subject, including EPA's recent regulations that reduce our dependence on oil, including the recent tailpipe rule and associated endangerment finding.

An attachment to this letter provides information about testifying before the Committee. If you have any questions, please contact Alex Barron or Michal Freedhoff of the Committee staff at (202) 225-4407.

Sincerely,



Edward J. Markey
Chairman
Subcommittee on Energy and Environment

Enclosure

cc: The Honorable Henry A. Waxman
Chairman

The Honorable Joe Barton
Ranking Member

The Honorable Fred Upton
Ranking Member
Subcommittee on Energy and Environment

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOHN D. DINGELL, MICHIGAN
CHAIRMAN EMERITUS
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
FRANK PALLONE, JR., NEW JERSEY
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
ANNA G. ESHOO, CALIFORNIA
BART STUPAK, MICHIGAN
ELIOT L. ENGEL, NEW YORK
GENE GREEN, TEXAS
DIANA DOGGETT, COLORADO
VICE CHAIRMAN

LOIS CAPPS, CALIFORNIA
MIKE DOYLE, PENNSYLVANIA
JANE HARMAN, CALIFORNIA
JAN SCHAKOWSKY, ILLINOIS
CHARLES A. GONZALEZ, TEXAS
JAY INSLEE, WASHINGTON
TAMMY BALDWIN, WISCONSIN
MIKE RUSS, ARKANSAS
ANTHONY D. WEINER, NEW YORK
JIM MATHESON, UTAH
G.K. BUTTERFIELD, NORTH CAROLINA
CHARLIE MELANCON, LOUISIANA
JOHN BARROW, GEORGIA
BARON P. HILL, INDIANA
DORIS O. MATSU, CALIFORNIA
DONNA CHRISTENSEN, VIRGIN ISLANDS
KATHY CASTOR, FLORIDA
JOHN SARBANES, MARYLAND
CHRISTOPHER MURPHY, CONNECTICUT
ZACHARY T. SPACE, OHIO
JERRY MCNERNEY, CALIFORNIA
BETTY SUTTON, OHIO
BRUCE BRALEY, IOWA
PETER WELCH, VERMONT

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

MAJORITY (202) 225-2927
FACSIMILE (202) 225-2625
MINORITY (202) 225-3841

energycommerce.house.gov

JOE BARTON, TEXAS
RANKING MEMBER

RALPH M. HALL, TEXAS
FRED UPTON, MICHIGAN
CLIFF STEARNS, FLORIDA
NATHAN DEAL, GEORGIA
ED WHITFIELD, KENTUCKY
JOHN SHIMKUS, ILLINOIS
JOHN B. SHADEGG, ARIZONA
ROY BLUNT, MISSOURI
STEVE BUYER, INDIANA
GEORGE RADANOVICH, CALIFORNIA
JOSEPH R. PITTS, PENNSYLVANIA
MARTY BOND MACK, CALIFORNIA
GREG WALDEN, OREGON
LEE TERRY, NEBRASKA
MIKE ROGERS, MICHIGAN
SUE WILKINS MYNICK, NORTH CAROLINA
JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA
MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE
PHIL GINGREY, GEORGIA
STEVE SCALISE, LOUISIANA

Witness Information Sheet

The following is a summary of some of the pertinent rules and procedures applicable to witnesses testifying before the Committee on Energy and Commerce:

- Witnesses should provide 150 copies of their written testimony (75 copies for subcommittee hearings) to Earley Green, Chief Clerk, in Room 2125 of the Rayburn House Office Building no later than 10:00 a.m. two business days prior to the hearing. Witnesses should also provide statements by this date in electronic format, either as a CD or via email in .pdf format to earley.green@mail.house.gov.
- At the hearing, each witness will be asked to summarize his or her written testimony in five minutes or less in order to maximize the time available for discussion and questions.
- House Rule XI clause 2(g)(4) requires that witnesses appearing in a nongovernmental capacity submit to the Committee in advance of the hearing "a curriculum vitae and a disclosure of the amount and source (by agency and program) of *each* Federal grant (or subgrant thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness." The attached form and instructions are intended to assist witnesses in complying with this requirement.
- Witnesses with disabilities should contact Committee staff to arrange any necessary accommodations.
- The jurisdiction of the Committee on Energy and Commerce is set forth in House Rule X clauses 1(f), 2, 3(e), and 4(e).
- The Committee rules governing this hearing are online at <http://energycommerce.house.gov/>.

For inquiries regarding these rules and procedures, please contact the Committee on Energy and Commerce at (202) 225-2927.

Witness Disclosure Requirement - "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Signature: _____ **Date:** _____

INSTRUCTIONS FOR COMPLETING THE TRUTH-IN-TESTIMONY DISCLOSURE FORM

1. ***In General.*** The form on the reverse side of the page is intended to assist witnesses appearing before the Committee on Energy and Commerce in complying with rule XI, clause 2(g)(4) of the Rules of the House of Representatives. The rule requires that:

In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of any Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness.

Please complete the form in accordance with these directions.

2. ***Name.*** Please provide the name of the witness in the box at the top of the form.
3. ***Governmental Entity (Item 1 on the form).*** Please check the box indicating whether or not the witness is testifying on behalf of a government entity, such as a Federal department or agency, or a State or local department, agency, or jurisdiction. Trade or professional associations of public officials are not considered to be governmental organizations.
4. ***Nongovernmental Entity (Item 2).*** Please check the box indicating whether or not the witness is testifying on behalf of an entity that is not a governmental entity.
5. ***Grants and Contracts (Item 3).*** Please list any Federal grants or contracts (including subgrants or subcontracts) that the witness personally has received from the Federal Government on or after October 1, 2006.
6. ***Entity(ies) to be Represented (Item 4).*** Please list all entities on whose behalf the witness is testifying.
7. ***Representational Capacity (Item 5).*** If the answer to the question in item 2 is 'yes,' please characterize the capacity in which the witness is testifying on behalf of the entities listed in item 4.
8. ***Affiliated Entities (Item 6).*** Please indicate whether the entity on whose behalf the witness is testifying has parent organizations, subsidiaries, or partnerships that are not represented by the testimony of the witness.
9. ***Grants and Contracts (Item 7).*** Please disclose grants and contracts as directed in item 7.
10. ***Submission.*** Please sign and date the form in the appropriate place. Please submit this form with your written testimony. Please note that under the Committee's rules, 150 copies of a written statement of your proposed testimony must be submitted at least two working days before the commencement of the hearing. Please also provide a copy in electronic format, as described in the letter of invitation.

AL-05-000-8284

Congress of the United States
House of Representatives
Washington, DC 20515

May 20, 2005

The Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

The Honorable James L. Connaughton
Chairman
Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503

Dear Mr. Johnson and Mr. Chairman:

The House Energy and Commerce Committee plans to hold a hearing later this month on the Administration's proposal to amend the Clean Air Act. We have been informed that EPA and CEQ will be testifying at this hearing. We are writing to request information that is critical to understanding and considering proposals to amend the Clean Air Act.

Many Members of Congress have repeatedly requested that you provide basic analyses allowing an apples-to-apples comparison across different multi-pollutant proposals. Such analyses must use updated modeling tools and account for regulations that EPA recently issued. It is, in fact, unthinkable that Congress would move forward to enact major changes to the Clean Air Act without such fundamental information regarding the effects of retaining current law and alternative approaches. We urge you to provide this information.

Additional information is also necessary to evaluate many of the details of the legislative proposals, particularly proposals made by the Administration and Senator Inhofe to weaken or eliminate numerous air quality protections currently provided by the Clean Air Act. This letter details our request for such additional data and information.

Information Request

1. The most recent version of S. 131 exempts sources that emit less than 30 lbs of mercury per year, while the previous version of S. 131 exempted sources that emit less than 50 lbs of mercury per year. The Administration's bill does not include any such exemption. In fact, EPA rejected a proposal to include a narrower 25 lb exemption in its recently

The Honorable Stephen L. Johnson
The Honorable James L. Connaughton
May 20, 2005
Page 2

finalized rule on mercury emissions from power plants.¹ EPA stated that such an exemption would provide almost no benefits for small businesses and could increase the program's overall costs. Of the 1,120 coal-fired units that were active in 1999, 581 (52%), emitted less than 50 lbs per year of mercury and 441 (39%) emitted less than 30 lbs per year of mercury.² In addition, the provision appears to allow somewhat higher emitting units to reduce just enough to reach the 30 or 50 lb limit and become exempt from the program. This would allow those units to avoid responsibility for meeting the cap levels, which would require larger reductions for many units.

- a. Please detail the emissions and economic effects of including the exemption for sources that emit less than 30 lbs, and less 50 lbs, of mercury annually, as provided in the Inhofe bills. Include in the analysis the assumption that sources with emissions above those levels will reduce down to the 30 (or 50) lb cut-off to avoid larger reduction requirements, if it is economical for them to do so.
 - b. Please explain whether the Administration supports an exemption for sources that emit either less than 30 lbs or 50 lbs of mercury per year.
2. The Administration's proposal and S. 131 also contain numerous other provisions that would remove, limit, or delay the effectiveness of many key aspects of the existing Clean Air Act. These changes apply broadly, well beyond the requirements for electric utilities, and they affect emissions of criteria pollutants and numerous toxic air pollutants besides mercury. These weakening changes include:
- Delaying existing deadlines for achieving safe air quality;³
 - Eliminating existing tools for cleaning up areas with unsafe air (through applying the transitional designation);⁴
 - Removing existing anti-backsliding provisions for newly clean areas;⁵
 - Exempting industrial sources from existing requirements to cut toxic air pollution;⁶

¹ U.S. EPA, *Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units, Final Rule*, 70 Fed. Reg. 28606 (May 18, 2005).

² U.S. PIRG, *The Fine Print: How a Loophole in the "Clear Skies" Bill Lets Power Plants off the Hook for Mercury Emissions* (Apr. 2005) (based on EPA data on power plant mercury emissions in 1999).

³ See CAA §§107, 110, 181-T85B.

⁴ See CAA §§182.

⁵ See CAA §175A.

The Honorable Stephen L. Johnson
The Honorable James L. Connaughton
May 20, 2005
Page 3

- Undermining states' existing authority to obtain relief from out-of-state pollution;⁷
 - Slashing protections for National Parks;⁸
 - Removing existing protections for clean air areas;⁹
 - Eliminating existing requirements for new and upgraded facilities to install up-to-date pollution controls;¹⁰
 - Avoiding existing requirements for mercury control;¹¹ and
 - Reducing noncompliance penalties for excess sulfur dioxide emissions.¹²
- a. Please explain whether EPA has modeled or otherwise quantified in any way the effect of each of these changes to existing CAA provisions. Please provide all such analyses, including any summaries, briefing papers, power point presentations etc.
- b. To the extent that the effects of any of these changes to existing CAA provisions are not incorporated in the basic modeling of alternative legislative proposals, please provide a separate analysis of each of those changes. For example, please explain how the provisions of S. 131 may affect air quality in National Parks.
- c. Please provide an analysis of the air quality, attainment, and public health effects that would occur if all areas potentially eligible for transitional status requested redesignation to transitional status. As part of this analysis, please address:
- i. How many areas may qualify for transitional status?
 - ii. What is the combined population of these areas?
 - iii. Assuming that current deadlines for these areas are extended until 2015 at a minimum, what are the impacts of the additional health damages from the extended deadlines?
- d. S. 131 § 406 allows boilers and process heaters that are not already subject to the program to opt into the program and accept weak caps on their emissions of SO₂,

⁶ See CAA §112 and implementing regulations.

⁷ See CAA §§110(a)(2)(D), 126.

⁸ See CAA §§165(a)(4), 165(d), 169A.

⁹ See CAA §165.

¹⁰ See CAA §165(a); 173(a)(2).

¹¹ See CAA §112(n).

¹² See CAA §411.

The Honorable Stephen L. Johnson
The Honorable James L. Connaughton
May 20, 2005
Page 4

NOx, and mercury. Boilers and process heaters are used at facilities such as refineries, chemical plants, manufacturing plants, and paper mills. These opt-in sources are exempted from *existing* air toxics requirements for all toxic air emissions besides mercury, such as hydrogen chloride, manganese, lead, and arsenic.

Please provide a qualitative and quantitative analysis of the impact of this provision. If EPA is uncertain how many units may apply to opt in, please use a high, middle, and low estimate for the number of opt-ins. (The high case should reflect the maximum number of boilers and process heaters that could opt in, which should correspond to the number that are not already covered by the cap-and-trade program.) Please indicate the resulting quantity of additional emissions for each air toxic that would otherwise be controlled under the existing section 112(d) rule for "Industrial, Commercial, and Institutional Boilers and Process Heaters."

3. In a letter dated April 21, 2005, to Senator Jeffords, EPA committed to provide information that would allow a "common platform" for analysis of multi-pollutant legislative proposals. After Mr. Johnson was confirmed by the Senate as Administrator, an unnamed EPA official was reported as saying that the Agency would not provide the promised information, ostensibly because Senator Carper had requested additional information beyond what EPA committed to provide.¹³ Please explain whether it is correct that EPA does not currently plan to provide the information detailed in the letter from then-Acting Administrator Johnson. If so, why not?
4. The Administration has claimed that the mercury caps in both the Administration's bill and the mercury rule were based on what EPA estimates could reasonably be achieved through cost-effective application of SO₂ and NO_x controls, as well as later use of cost-effective mercury-specific control technology, over the next thirteen years. In 2002, the Administration determined that the maximum amount of mercury reduction that should be required through amending the Clean Air Act was the quantity of reductions produced by setting a 15 ton cap effective in 2018 (which, due to emissions banking, would allow continued higher levels of mercury emissions until 2025 or later). Just a few months ago, the Administration again selected this cap level and date for mercury emission limits in the final mercury rule. However, since the Administration first selected this option, extensive information has become available indicating that more stringent and faster reductions are affordable and justified by the benefits. (They are also, of course, legally required under section 112.)

¹³ *EPA Retreats on Clean Air Analysis Following Johnson Confirmation*, InsideEPA (Apr. 29, 2005).

The Honorable Stephen L. Johnson
The Honorable James L. Connaughton
May 20, 2005
Page 5

For example, the costs of sorbent injection control technologies have fallen by a factor of four, according to pollution control manufacturers.¹⁴ EPA has positive results from 16 full scale tests of this control technology on facilities using all types of coal, including one year-long test. The manufacturers state publicly that they are currently selling the control technology and are providing the same performance guarantees as they provide for other types of emissions control technologies.

In addition, extensive new evidence of the benefits of mercury reductions has become available since 2002. For example, the Harvard Center for Risk Analysis, funded by an EPA grant, conducted a study titled "Economic Valuation of Human Health Benefits of Controlling Mercury Emissions from U.S. Coal-Fired Power Plants."¹⁵ This study found that controlling mercury emissions would produce annual health benefits of between \$100 million and \$5 billion, in part from reductions in cardiovascular disease. In contrast, EPA considered a very limited subset of the harm caused by mercury emissions — only the health impacts from mercury in recreationally-caught fresh-water fish — and estimated these benefits at \$0.4 to \$3 million annually.

Even the broader Harvard study did not take into account any of the extensive harm to wildlife and ecosystems from mercury emissions. A series of 21 scholarly papers published in the journal *Ecotoxicology* in 2005 present a new and comprehensive understanding of mercury pollution in freshwater ecosystems in northeastern North America.¹⁶ These articles were based on a database of over 30,000 measurements compiled from 2001 to 2005 by the BioDiversity Research Institute and Environment Canada. They found that mercury levels are high and pervasive throughout the Northeast, both in water bodies and in forests, and that many animals, even forest songbirds, have elevated mercury burdens. These articles also identified and mapped for the first time, biological hotspots in the northeast that pose an ecological risk.

Another study conducted for the EPA Office of Water titled "Benefits of Reducing Mercury in Saltwater Ecosystems: A Case Study" analyzed a large mercury hot spot off

¹⁴ Briefing by U.S. Manufacturers on Mercury Control Options for Utilities (Jan. 31, 2005) (congressional briefing).

¹⁵ Glenn Rice and James K. Hammitt, Harvard Center for Risk Analysis, *Economic Valuation of Human Health Benefits of Controlling Mercury Emissions from U.S. Coal-Fired Power Plants* (Feb. 2005).

¹⁶ David C. Evers, *Mercury Connections: The Extent and Effects of Mercury Pollution in Northeastern North America* (2005) (summarizing findings of 21 papers published in *Ecotoxicology* (2005)).

The Honorable Stephen L. Johnson
The Honorable James L. Connaughton
May 20, 2005
Page 6

the southeast coast that extends from North Carolina to northern Florida.¹⁷ This study found that reducing U.S. mercury emissions by 30% could produce \$600 million in benefits in the southeastern United States.

- a. In 2002, the Administration proposed to amend the Clean Air Act to mandate in the law a specific level of mercury control, and the Administration decided that the appropriate level of mercury control is a 15 ton cap effective in 2018. Please indicate whether the Administration has re-evaluated this decision since 2002. If not, why not?
 - b. If the Administration has re-evaluated that decision, please describe what information the Administration took into account in deciding to retain the requirement for a 15 ton cap effective in 2018. Please provide any available documentation of and supporting analysis for that decision.
 - c. Please explain whether the Administration considered each piece of information discussed above. Please indicate why the Administration still believes that a 15 ton cap effective in 2018 would adequately reduce mercury emissions, in light of the information about costs and benefits that has become available since 2002.
 - d. Please explain whether the Administration believes that a more stringent cap or earlier deadline would reduce net benefits. If so, what is the analytical basis for that belief? Please provide any such analysis. Has the Administration analyzed the health effects and ecological effects of a more stringent limit? If so, please provide such analysis. If not, why not?
 - e. It appears that the Administration did not consider any of the information discussed above (with the exception of the emissions control technology test outcomes) before issuing the final mercury rule in March. Please explain why the Administration did not consider this information.
5. There are serious concerns about the health effects of the provision in the House energy bill that would delay the clean air deadlines for smog in many cities. EPA Assistant Administrator Holmstead has downplayed the effects of this provision by emphasizing that EPA could block areas from taking full advantage of the extension, which would allow areas to remain polluted until 2015 or beyond.¹⁸ Mr. Holmstead points out that rather than extending the deadline until upwind emissions are required to be controlled,

¹⁷ Douglas Rae and Laura Graham, *Benefits of Reducing Mercury in Saltwater Ecosystems: A Case Study* (Jan. 2004).

¹⁸ *OnPoint - EPA Air Chief Jeff Holmstead* (E&ETV News) (Apr. 25, 2005).

The Honorable Stephen L. Johnson
The Honorable James L. Connaughton
May 20, 2005
Page 7

EPA *could* require the area to clean up its air "as expeditiously as practicable." In practice, however, it appears that EPA has very rarely (if ever) used such authority. Sections 172 and 181 of the Clean Air Act both require that clean air be achieved "as expeditiously as practicable" but no later than the numeric deadlines indicated in those sections. Please identify any and all instances in which EPA has interpreted the Clean Air Act to require, pursuant to the "as expeditiously as practicable" language, ozone attainment by a date in advance of a specified 3, 5, 6, 9, 15 or 20-year attainment date set forth in section 172 or section 181.

Please provide the information requested above by May 25, 2005. If you cannot answer some of these requests due to time constraints, please identify any such requests and indicate the date by which you will provide those responses.

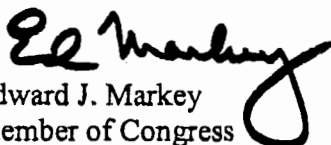
Sincerely,



Henry A. Waxman
Member of Congress



Thomas H. Allen
Member of Congress



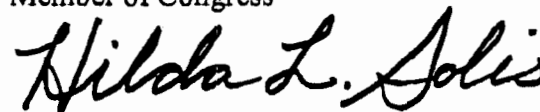
Edward J. Markey
Member of Congress



Eliot L. Engel
Member of Congress



Lois Capps
Member of Congress



Hilda L. Solis
Member of Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 30 2005

OFFICE OF
AIR AND RADIATION

The Honorable Edward Markey
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Markey:

Thank you for your May 20, 2005, letter regarding information about the Clear Skies Act and other legislative proposals. Please see the enclosed responses addressing your request for analyses allowing comparisons across different multi-pollutant proposals.

Thank you for your letter. If you have further questions, please contact me or have your staff contact Lora Strine in EPA's office of Congressional and Intergovernmental Relations, at (202) 564-3689.

Sincerely,

A handwritten signature in black ink, appearing to read "W L Wehrum", is written over a horizontal line.

William Wehrum
Acting Assistant Administrator

Enclosures

- Enclosure 1: Answers to Congressman Waxman's requests
- Enclosure 2: Johnson letter to Senator Inhofe dated May 26, 2005
- Enclosure 3: Johnson letter to Senator Carper dated April 21, 2005
- Enclosure 4: Johnson letter to Senator Leahy, et. al., dated April 5, 2005

COMMITTEES

NATURAL RESOURCES
RANKING DEMOCRAT

ENERGY AND COMMERCE

EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS

2108 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2107
(202) 225-2836

DISTRICT OFFICES:

5 HIGH STREET, SUITE 101
MEDFORD, MA 02155
(781) 396-2900

188 CONCORD STREET, SUITE 102
FRAMINGHAM, MA 01702
(508) 875-2900

<http://markey.house.gov>

Congress of the United States
House of Representatives
Washington, DC 20515-2107

August 22, 2012

AL-12-001-4322

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

The Environmental Protection Agency (EPA) recently denied a March 20, 2012 petition¹ to suspend the use of a common pesticide called clothianidin. The petitioners presented evidence and recent scientific studies to demonstrate that the use of clothianidin, a member of a closely related group of pesticides known as neonicotinoids, is jeopardizing bee populations. In its response letter, the EPA posited that there was not sufficient scientific evidence to support the claims of the petition and to warrant suspension of clothianidin's use.² Because honeybees are a key pollinator for many food crops and therefore contribute significantly to our economy, it is important that we fully understand how certain pesticide use may be contributing to their decline. I am writing to inquire what steps the EPA is taking to ensure that there is sufficient scientific understanding of how clothianidin and other pesticides impact honeybees and other pollinators.

Bees are vital to our nation's economy and food security. According to the U. S. Department of Agriculture (USDA), more than 100 crops in North America require pollinators to be their most productive, and honeybees act as a key pollinator for many of these crops.³ Bee pollination is thought to contribute approximately \$15 billion worth of additional crop yields.⁴ As such, the decline in honeybees could decrease yields for many important crops, resulting in lost revenues for farmers and other members of the food industry and could potentially result in higher food prices for consumers. Moreover, many Americans make their living by raising bees and provisioning their services. According to a 2011 survey, individual beekeepers lost an average of 38.4% of their colonies from October 2010 to April 2011.⁵ The specific reasons for these bee deaths remain unknown.

¹ <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2012-0334-0015>

² <http://www.epa.gov/pesticides/about/intheworks/epa-respns-to-clothianidin-petition-17july12.pdf>

³ http://plants.usda.gov/pollinators/Pesticide_Considerations_For_Native_Bees_In_Agroforestry.pdf

⁴ <http://www.ars.usda.gov/News/docs.htm?docid=15572>

⁵ <http://www.ars.usda.gov/is/pr/2011/110523.htm>

Beginning in the mid-2000's, beekeepers began reporting sudden, mysterious, and substantial declines in viable honeybee colonies ranging from 30-90% depending on the region.⁶ Notably, many beekeepers reported that hives had been abandoned by adult worker bees, leaving the Queen and immature bees to starve. This phenomenon was dubbed "Colony Collapse Disorder". While the exact cause of Colony Collapse Disorder is a topic of ongoing study, scientific evidence has implicated a class of pesticides known as neonicotinoids in this phenomenon.

Two recent scientific studies offer evidence that neonicotinoids may cause Colony Collapse Disorder. In a study⁷ published in the journal *Science* on April 20, 2012, scientists reported that honeybees treated with a nonlethal dose of thiamethoxam, a type of neonicotinoid, failed to return to their hive. In a related study⁸ published in the same issue of *Science*, researchers treated colonies of bumblebees with a low dose or high dose of imidacloprid, another type of neonicotinoid. They observed that bees exposed to imidacloprid had lower body weight than non-exposed bees. Moreover, colonies exposed to imidacloprid produced fewer queens than non-exposed colonies. Many other studies show that neonicotinoids harm bees, as reviewed in the March 20, 2012 petition and in EPA's technical support document for the July 17, 2012 response.⁹

Neonicotinoids are considered to be a "modern" class of pesticides. They are the only class of insecticides introduced in the last 50 years and are now widely used to kill a myriad of insects in commercial and domestic settings. Neonicotinoids include thiamethoxam (registered in 1972), imidacloprid (registered in 1994), nithiazine (registered in 1995), acetamiprid (registered in 2002), clothianidin (registered in 2003), thiacloprid (registered in 2003), and dinotefuran (registered in 2004). They appear as the active ingredients in a variety of products targeted at everything from large-scale agriculture to home gardening. EPA estimates that corn farmers use 70,000 pounds of imidacloprid per year, while potato farmers use 50,000 pounds per year.¹⁰ Imidacloprid is also the active ingredient in products marketed for domestic outdoor pest control. For example, a product called CoreTect® combines imidacloprid and plant fertilizer. CoreTect is administered as a slow-release tablet in the soil, such that imidacloprid stays in the plant for months.¹¹ A similar product called Bonide's Rose RX Systemic Drench promises to persist for six weeks in plants and soil.¹² In addition, imidacloprid is the active ingredient in popular flea repellents for pets.¹³ The variety and popularity of products containing neonicotinoids makes it clear that bees and other pollinators encounter neonicotinoids throughout domestic and agricultural landscapes.

⁶ <http://www.wired.com/wiredscience/2012/04/neonicotinoids-colony-collapse/>

⁷ Henry, M. *et al.* 2012. A common pesticide decreases foraging success and survival in honeybees. *Science* 336:348-350.

⁸ Whitehorn, P.R. *et al.* 2012. Neonicotinoid pesticide reduces bumble bee colony growth and queen production. *Science* 336:351-352.

⁹ <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2012-0334-0012>

¹⁰ Imidacloprid summary document: EPA-HQ-OPP-2008-0844-0002

¹¹ <http://www.domyownpestcontrol.com/coretect-tree-shrub-tablets-p-1352.html>

¹² <http://www.domyownpestcontrol.com/bonide-rose-rx-systemic-drench-concentrate-p-1711.html>

¹³ Examples include Advantage®, Advantix®, K-9 Advantix®

Several European countries have already taken action to protect bees from neonicotinoids. Acute incidents such as a large bee die-off in Germany in 2008, combined with rising concerns regarding subtler negative impacts of neonicotinoids on bees, have led four countries to suspend certain neonicotinoid seed treatments. France has suspended the use of clothianidin to treat corn and sunflower seeds and thiamethoxam to treat the seeds of rapeseed plants. Germany and Italy have suspended the use of clothianidin, thiamethoxam and imidacloprid to treat corn seeds, and Slovenia has suspended the use of clothianidin to treat corn seeds. While sunflower is the only species among these plants that requires pollination, the suspensions of pesticide use apply to plants that bees may be in close proximity to, regardless of whether the bees are pollinating those plants.¹⁴

On March 20, 2012, a group of 28 petitioners wrote a letter to the EPA seeking a suspension of registration for clothianidin, asserting that the chemical causes Colony Collapse Disorder. In a response dated July 17, 2012, the EPA denied the request for an emergency suspension on the grounds that there was not sufficient scientific evidence linking clothianidin to Colony Collapse Disorder. The letter explains that, "the EPA agrees with the scientific community that additional research is necessary to address Colony Collapse Disorder. However, the existence of uncertainty as to these questions is not sufficient to satisfy the high probability standard necessary to support the finding of imminent hazard."¹⁵ Thus, while there is some evidence linking clothianidin and other neonicotinoids to Colony Collapse Disorder, the EPA does not feel that there is sufficient evidence to justify action at this time.

Given the concerns raised by scientists about the impacts of neonicotinoids on bee colonies, actions taken by other countries to restrict or ban the use of these chemicals and the EPA's role in the oversight of pesticide registration and use, I request that you respond to the following questions and provide supporting documents no later than September 9, 2012.

1. Has the EPA investigated the impacts of neonicotinoids on honeybees and other pollinators? If so, what has the EPA concluded? If not, why not?
2. In its July 17, 2012 letter, EPA suggested that gaps exist in the research on the effects of neonicotinoids on bees and that these gaps prevent EPA from taking action to ban these chemicals. Please provide a list of relevant research questions that EPA needs to have answered in order to satisfy the "high probability standard" necessary to suspend registration of all or some of the active neonicotinoid ingredients.
3. What, if any, interim steps can the EPA take with the current scientific evidence to limit or restrict the use of all or specific neonicotinoids to reduce the impact on bees? Has the EPA initiated any of these steps? If not, why not?
4. When does the EPA expect to complete the registration review for the seven neonicotinoid chemicals listed above? Will the EPA consider the impacts this class of pesticides has on honeybees (including the economic impact) when conducting the registration review for each of the active ingredients?

¹⁴ <http://www.epa.gov/opp00001/about/intheworks/ccd-european-ban.html>

¹⁵ <http://www.epa.gov/opp00001/about/intheworks/epa-respns-to-clothianidin-petition-17july12.pdf>

5. What steps is the EPA taking to ensure that it has sufficient scientific evidence to make informed determinations about effects of neonicotinoids on bees and other pollinators?
6. If based on additional scientific information the EPA determines that neonicotinoids are a cause or implicating factor in bee population declines, what steps can the EPA take to ensure that bees are protected from these pesticides?

Thank you for your assistance and cooperation in responding to this request. Should you have any questions, please have your staff contact Jill Cohen at 202-225-6065 or Dr. Avenel Joseph at 202-225-2836.

Sincerely,

A handwritten signature in black ink, reading "Edward J. Markey". The signature is written in a cursive, flowing style with a large, prominent "E" and "M".

Edward J. Markey
Member of Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 28 2012

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

The Honorable Edward J. Markey
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your August 22, 2012, letter to Environmental Protection Administrator Lisa P. Jackson to inquire what steps the EPA is taking to ensure that there is sufficient scientific understanding of how clothianidin and other pesticides impact honey bees and other pollinators. We share your concern about protecting pollinators and agree they are an important component to healthy agricultural ecosystems. Administrator Jackson forwarded your letter to me for response on behalf of the EPA because my office is responsible for regulating pesticides. I appreciate the opportunity to respond to the issues you have raised.

I want to assure you that the EPA is focused on addressing the potential effects of pesticides on pollinators and is engaged in national and international efforts to address those concerns. In fact, we accelerated the scheduling of the neonicotinoid pesticides in our registration review process, and we are coordinating our efforts with the California Department of Pesticide Regulation and Health Canada's Pest Management Regulatory Authority. We believe that by following the EPA's ongoing commitment to transparency and public participation and relying on the best science available, our established registration review process will yield well-reasoned regulatory decisions. As part of advancing our understanding in the context of the reevaluation, the EPA has already required six specific studies for imidacloprid to address uncertainties related to potential honey bee exposure and effects. We will also require additional, similar studies of other neonicotinoid insecticides in the near future. These studies, currently under way or anticipated, will require between 3 and 24 months to complete, with laboratory-based acute exposure studies requiring the least time and multi-generational, full-field studies requiring the most. Based on current workplan schedules for the neonicotinoids, the registrants are generating exposure and effects data to be submitted to the EPA by the end of 2015.

The scientific issues are complex and scientists from around the globe are working to better understand the potential effects of pesticides, including neonicotinoids, on honey bees. In concert with national and international scientific bodies, including the European Food Safety Authority, we have been working for several years to advance pollinator science and are finalizing a proposed pesticide risk assessment process for pollinators. An important milestone was the public meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel on September 11-14, 2012, which provided an external scientific peer review of our proposed pollinator risk assessment framework. If the SAP recommends any additional data or study protocols, we will be able to accommodate this with our current schedule.

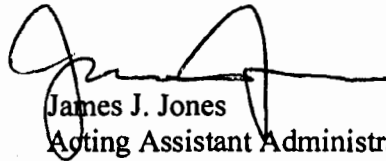
We believe that staying abreast of evolving science, communicating with our regulatory partners here and abroad and working with research scientists and practitioners in laboratories and in the field puts the agency in the best position to account for potential effects of neonicotinoid pesticides on honey bees in

our regulatory decisions. The registration review process allows the EPA to act quickly if the data and associated scientific evaluations warrant such action. If, at any time during our review, the science indicates that, in fact, neonicotinoid pesticides used according to the label instructions are not meeting the protection standards of FIFRA, the EPA will take necessary regulatory action.

With regard to your six specific questions, please see the enclosed responses.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Mr. Sven-Erik Kaiser in EPA's Office of Congressional and Intergovernmental Relations at (202) 566-2753.

Sincerely,

A handwritten signature in black ink, appearing to read 'James J. Jones', with a long horizontal stroke extending to the right.

James J. Jones
Acting Assistant Administrator

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AL-12-000-5979

MAR 30 2012

THE ADMINISTRATOR

The Honorable Ed Markey
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Markey:

I am pleased to renew the charter of the Human Studies Review Board in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Human Studies Review Board is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The board will be in effect for two years from the date the charter is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Clara Jones in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3701.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa P. Jackson", written over a horizontal line.

Lisa P. Jackson

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

HUMAN STUDIES REVIEW BOARD

1. **Committee's Official Designation (Title):**

Human Studies Review Board

2. **Authority:**

This charter renews the Human Studies Review Board (HSRB) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. HSRB is in the public interest and supports EPA in performing its duties and responsibilities.

3. **Objectives and Scope of Activities:**

The HSRB will provide advice, information, and recommendations on issues related to scientific and ethical aspects of human subjects research.

The major objectives are to provide advice and recommendations on:

- a. Research Proposals and Protocols;
- b. Reports of completed research with human subjects; and
- c. How to strengthen EPA's programs for protection of human subjects of research.

4. **Description of Committees Duties:**

The duties of the HSRB are solely to provide scientific or policy advice to EPA.

5. **Official(s) to Whom the Committee Reports:**

HSRB will report to the EPA Administrator through EPA's Science Advisor.

6. **Agency Responsible for Providing the Necessary Support:**

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of the Science Advisor (OSA).

7. Estimated Annual Operating Costs and Person Years:

The estimated annual operating cost of HSRB is \$850,000 which includes 3.0 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the DFO. The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

The Committee expects to meet approximately four (4) times a year. Meetings may occur approximately once every three (3) months or as needed and approved by the Designated Federal Officer (DFO). EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, HSRB will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of section 552b of title 5, United States Code. Interested persons may attend meetings, appear before the Board as time permits, and file comments with the HSRB.

10. Duration and Termination:

This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

The HSRB will be composed of approximately thirteen (13) members who will serve as Special Government Employees (SGEs) or Regular Government Employees (RGEs). In selecting members, the EPA will consider candidates from the environmental scientific/technical fields, human health care professionals, academia, industry, public and private research institutes or organizations, other governmental agencies, and other relevant interest areas. The HSRB membership will include experts in relevant scientific or technical disciplines such as bioethics, biostatistics, human health risk assessment and human toxicology.

12. Subgroups:

EPA, or the HSRB with EPA's approval, may form HSRB subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the HSRB for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the Committee, formally and informally established subcommittees, or other subgroups of the Committee, shall be handled in accordance with NARA General Records Schedule 26, Section 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

March 28, 2012

Agency Approval Date

Date Filed with Congress

AL-11-001-3090

**THE WHITE HOUSE OFFICE
REFERRAL**

July 29, 2011

TO: ENVIRONMENTAL PROTECTION AGENCY

ACTION COMMENTS:

ACTION REQUESTED: DIRECT REPLY W/COPY

REFERRAL COMMENTS: JOINT RESPONSE WITH DOT

ID: 1060929

MEDIA: EMAIL

DOCUMENT DATE: July 27, 2011

TO: PRESIDENT OBAMA

FROM: THE HONORABLE NANCY PELOSI
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

SUBJECT: URGES THE PRESIDENT TO ESTABLISH CARBON POLLUTION AND FUEL
EFFICIENCY STANDARDS FOR VEHICLES SOLD IN MODEL YEARS 2017-2025

COMMENTS:

**PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9 WORKING DAYS OF RECEIPT,
UNLESS OTHERWISE STATED, PLEASE TELEPHONE THE UNDERSIGNED AT (202) 456-2590.**

**RETURN ORIGINAL CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT) TO: DOCUMENT TRACKING UNIT,
ROOM 85, OFFICE OF RECORDS MANAGEMENT - THE WHITE HOUSE, 20500
FAX A COPY OF REPOSE TO: (202) 456-5881**

**THE WHITE HOUSE
DOCUMENT MANAGEMENT AND
TRACKING WORKSHEET**



DATE RECEIVED: July 29, 2011

CASE ID: 1060929

NAME OF CORRESPONDENT: THE HONORABLE NANCY PELOSI

SUBJECT: URGES THE PRESIDENT TO ESTABLISH CARBON POLLUTION AND FUEL EFFICIENCY STANDARDS FOR VEHICLES SOLD IN MODEL YEARS 2017-2025

ROUTE TO: AGENCY/OFFICE		(STAFF NAME)	ACTION		DISPOSITION	
			CODE	DATE	TYPE RESPONSE	CODE DATE COMPLETED
LEGISLATIVE AFFAIRS		ROB NABORS	ORG	07/29/2011		
ACTION COMMENTS:						
DEPARTMENT OF TRANSPORTATION			R	07/29/2011		
ACTION COMMENTS:						
✓ ENVIRONMENTAL PROTECTION AGENCY			R	07/29/2011		
ACTION COMMENTS:						
ACTION COMMENTS:						
ACTION COMMENTS:						

COMMENTS: 2 ADDL SIGNEES

MEDIA TYPE: EMAIL

USER CODE:

ACTION CODES	DISPOSITION		
	TYPE RESPONSE	DISPOSITION CODES	COMPLETED DATE
A = APPROPRIATE ACTION B = RESEARCH AND REPORT BACK D = DRAFT RESPONSE I = INFO COPY/NO ACT NECESSARY R = DIRECT REPLY W/ COPY ORG = ORIGINATING OFFICE	INITIALS OF SIGNER (W.H. STAFF) NRN = NO RESPONSE NEEDED OTBE = OVERTAKEN BY EVENTS	A = ANSWERED OR ACKNOWLEDGED C = CLOSED X = INTERIM REPLY	DATE OF ACKNOWLEDGEMENT OR CLOSEOUT DATE (MM/DD/YY)

KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES
REFER QUESTIONS TO DOCUMENT TRACKING UNIT (202)-458-2590
SEND ROUTING UPDATES AND COMPLETED RECORDS TO OFFICE OF RECORDS MANAGEMENT - DOCUMENT TRACKING UNIT ROOM 85, EEOB.

Scanned by
GRTA

Congress of the United States
House of Representatives
Washington, DC 20515

July 27, 2011

The President
The White House
Washington, DC 20500

Dear Mr. President:

We are writing to urge you to establish carbon pollution and fuel efficiency standards for vehicles sold in model years 2017-2025 that recognize our technological capability, our need for energy independence, the large potential cost savings for consumers, and the importance of strong standards for preventing climate change and enhancing our national security.

The Environmental Protection Agency (EPA), National Highway Traffic Safety Administration (NHTSA), and the California Air Resources Board (CARB) are currently developing proposed carbon pollution and fuel efficiency standards under the national program for new vehicles sold in model years 2017-2025. We believe these should be the strongest possible standards.

The existing standards for model years 2012 to 2016 demonstrate the remarkable benefits possible from cutting carbon pollution from motor vehicles. When the auto fleet turns over and all vehicles are meeting these standards, the nationwide savings will be 2 million barrels of oil per day. For the individual consumer, the standards are expected to yield net savings of \$3,000 over the life of a vehicle. In a fundamental and historic shift, the new standards are predicted to stop the growth in U.S. consumption of oil.

We now have the opportunity to build on this progress to further reduce our costly and dangerous oil dependence and protect our health and environment.

Technology is available to significantly cut pollution from automobiles and light trucks by 2025. Preliminary estimates by the Environmental Protection Agency and the National Highway Transportation Safety Administration indicate that these standards could save consumers as much as \$7,400 over the lifetime of a model year 2025 vehicle, while saving up to 1.3 billion barrels of oil and cutting our carbon pollution by 590 million metric tons over the lifetime of model year 2025 vehicles. A high standard will also benefit our domestic auto industry. It will spur innovation and ensure that U.S. companies stay at the forefront of automotive technology.


The estimate of the potential consumer benefits by the Administration relies on the assumption that the costs of gasoline will range from \$3.49 per gallon in 2025 to \$4.34 per gallon in 2050. We believe these are unrealistically low gasoline prices. If gasoline prices are

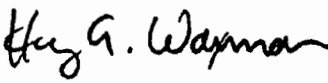
The President
July 27, 2011
Page 2

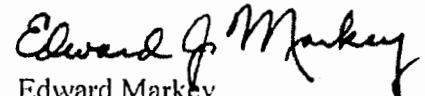
higher, as many informed observers expect, the benefits to consumers are likely to greatly exceed the \$7,400 estimated cost-savings.

We urge you to seize this opportunity and set vehicle standards that maximize consumer savings, reductions in carbon pollution, and our energy independence.

Sincerely,


Nancy Pelosi
Democratic Leader


Henry A. Waxman
Ranking Member
Committee on Energy
and Commerce


Edward Markey
Ranking Member
Committee on Natural
Resources



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 16 2011

OFFICE OF
AIR AND RADIATION

The Honorable Edward Markey
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter of July 27, 2011, co-signed by two of your colleagues, regarding the fuel economy and greenhouse gas (GHG) emissions standards for model years 2017 to 2025 passenger cars and light trucks. We appreciate your comments and value your interest in these standards, and have added your letter to our administrative docket for the rulemaking.

The U.S. Environmental Protection Agency and National Highway Traffic Safety Administration are committed to a strong and comprehensive national program to reduce GHG pollution and enhance our energy security. On July 29, 2011, the President announced a historic agreement with thirteen automakers and the State of California, with the support of the United Auto Workers, to pursue the next phase in the national vehicle program. The standards, which would require performance equivalent to 163 grams of CO₂ per mile or 54.5 miles per gallon by 2025, will reduce America's dependence on foreign oil and result in significant savings at the pump for American families. Importantly, under the new standards, consumers will continue to have access to the same full range of vehicle choices that they have today.

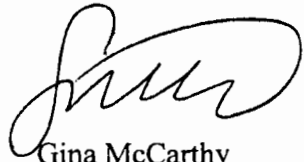
Information on this announcement, including letters of support from the 13 automakers and a Supplemental Notice of Intent issued by the EPA and NHTSA which provides an outline of the agreement, is available on our website at: <http://www.epa.gov/otaq/climate/regulations.htm>.

The EPA appreciates your support of our efforts to reduce carbon pollution and improve fuel economy by developing a strong long term program. We are working closely with auto manufacturers and other stakeholders to ensure the upcoming standards are achievable, cost effective, and preserve consumer choice. I assure you that we are carefully analyzing the potential impacts of the standards under consideration.

The EPA and NHTSA will issue a joint proposed rulemaking which will include full details on the proposed program and supporting analyses, including the costs and benefits of the proposal and its effects on the economy, auto manufacturers, and consumers. The EPA understands the public interest in this rulemaking and is committed to broad public participation. We will carefully consider all the comments we receive.

Again, thank you for your letter. If you have further questions or concerns, please contact me or your staff may call Diann Frantz in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3668.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gina McCarthy', with a large, stylized initial 'G'.

Gina McCarthy
Assistant Administrator

DUC HASTINGS WA
 CHAIRMAN
 DON YOUNG AK
 JOHN J. DUNCAN, JR. TN
 LOUIE GOMMERT TX
 ROB BISHOP UT
 DOUG LAMBORN CO
 ROBERT J. WITTMAN VA
 PAUL C. BROWN GA
 JOHN FLEMING LA
 MIKE COFFMAN CO
 TOM MCCLINTOCK CA
 GLENN THOMPSON PA
 JEFF DENHAM CA
 DAN BENISHKE MI
 DAVID RIVERA FL
 JEFF DUNCAN SC
 SCOTT R. TIPTON CO
 PAUL A. GOSAR AZ
 RAUL R. LABRADOR ID
 KRISTI L. NOEM SD
 STEVE SOUTHERLAND II FL
 BILL FLORES TX
 JIMMY HARRIS MO
 JEFFREY M. LANDRY LA
 CHARLES J. "CHUCK" FLEISCHMANN TN
 JON RUNYAN NJ
 BILL JOHNSON OH

TODD YOUNG
 Chief of Staff

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

EDWARD J. MARKEY MA
 RANKING DEMOCRATIC MEMBER
 DALE E. KILDEE MI
 PETER A. DEFazio OR
 ENI F.H. FALEOMAVAEGA AS
 FRANK PALLONE JR. NJ
 GRACE F. NAPOLITANO CA
 RUSH D. HOLT NJ
 RAUL M. GRIJALVA AZ
 MADELEINE Z. BORDALLO GU
 JIM COSTA CA
 DAN BOREN OK
 GREGORIO KILILI CAMACHO SABLAN CNMI
 MARTIN HEINRICH NM
 BEN RAY LUJAN NM
 DONNA M. CHRISTENSEN VI
 JOHN P. SARBADES MD
 BETTY SUTTON OH
 NIKI TSONGAS MA
 PEDRO R. PIERLUISI PR
 JOHN GARAMENDI CA
 COLLEEN W. HANABUSA HI

JEFFREY DUNCAN
 DEMOCRATIC STAFF DIRECTOR

August 9, 2011

The Honorable Lisa Jackson
 Administrator
 Environmental Protection Agency
 Ariel Rios Building
 1200 Pennsylvania Avenue, N.W.
 Washington, D.C. 20460

Dear Administrator Jackson,

The Environmental Protection Agency (EPA) is currently finalizing a general permit for the application of pesticides to U.S. waters, known as the Pesticide General Permit (PGP).¹ We are concerned that the draft PGP, as written, will not be sufficiently protective for endangered species, and strongly urge you to adopt the simple conservation measures recommended by the National Marine Fisheries Service (NMFS) in its recent biological opinion for the PGP.²

In the 40 years that the EPA has administered the Clean Water Act (CWA),³ the agency has never issued a CWA permit that included limitations on the application of a pesticide directly into a body of water.⁴ This omission occurred because the EPA concluded that the registration and labeling requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)⁵ were fully adequate to protect the environment. Unfortunately, throughout the United States, the facts on the ground demonstrate that complying with the requirements of FIFRA has not resulted in our Nation's waters being fully protected. In fact, pesticide contamination is pervasive in our streams, rivers, and lakes, and has caused adverse impacts to both wildlife and human health. In

¹ A copy of the PGP permit can be found at: http://www.epa.gov/npdes/pubs/draftfinal_pgp.pdf

² The NMFS biological opinion was published on June 17, 2011 and can be found at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2010-0257-0945>

³ 33 U.S.C. § 1251 *et seq.*

⁴ See 71 Fed. Reg. 68,484 *Application of Pesticide to Waters of the United States in Compliance with FIFRA* (Nov. 27, 2006). "In the more than 30 years that EPA has administered the CWA, the Agency has never issued an NPDES permit for the application of a pesticide to or over water to target a pest that is present in or over the water. Nor has the Agency ever stated in any general policy or guidance that an NPDES permit is required for such applications."

⁵ 7 U.S.C. § 136 *et seq.*

Director Jackson
August 9, 2011
Page 2

2006, the U.S. Geological Survey's (USGS) National Water-Quality Assessment Program detected measurable concentrations of pesticides in 90% of the surface water bodies it analyzed.⁶ In approximately 20% of the water bodies, the USGS detected 10 or more pesticide compounds. Most alarmingly, more than half of all agricultural streams sampled, and more than three-quarters of all urban streams sampled, had pesticides concentrations that exceeded one or more EPA limits for aquatic life—indicating a high likelihood that aquatic species are being adversely impacted by pesticide exposure.

In 2009, the Sixth Circuit Court of Appeals rejected the EPA's approach on pesticide management and stated that the discharges of pesticides into waters of the United States must fully comply with the requirements of the CWA.⁷ In response to this decision, the EPA has been developing the PGP, which will require that pesticide applicators receive a permit under the CWA prior to the discharge of pesticides into U.S. waters that will include the circumstances under which such discharges can occur. The PGP will only apply in seven states, U.S. territories, and tribal lands where the EPA has primary responsibility for administering the CWA.⁸

Now that the EPA is finalizing the PGP it is important that this permit fully meets the statutory requirements of the CWA, FIFRA, and the Endangered Species Act (ESA). To its credit, the EPA did initiate the necessary consultations under Section 7 of the ESA to determine whether the issuance of the PGP might jeopardize the existence of any endangered or threatened species.⁹ In response to this consultation, the National Marine Fisheries Service (NMFS) issued a biological opinion that determined that the issuance of the PGP, in its current form, would jeopardize the continued existence of 33 endangered species, including all of the listed salmon and steelhead stocks along the West Coast, Atlantic salmon and sturgeon, and the listed population of killer whales in Washington state. As required by the ESA, NMFS included in its draft biological opinion three Reasonable and Prudent Alternatives (RPAs) that would avoid the risk of jeopardy for these endangered species. To fully meet its obligations under the ESA, the EPA must adopt the RPAs contained within the biological opinion or it must adopt other similar conservation measures that accomplish the same goals.

We believe that the three RPAs provide commonsense adjustments to the PGP that the EPA should adopt. First, NMFS recommended that EPA identify the pesticides covered by the PGP that are causing the most severe adverse impacts to endangered species and to require additional protective measures for this small subset of pesticides. Second, NMFS recommended

Director Jackson

⁶ Gilliom et. al. 2006. The Quality of Our Nation's Waters-Pesticides in the Nation's Streams and Ground Water, 1992-2001, p 172

⁷ *National Cotton Council, et al. v. EPA* (6th Cir. 2009).

⁸ The PGP will apply in Vermont, Delaware, Idaho, Washington, Massachusetts, New Hampshire, the District of Columbia, and on Tribal lands.

⁹ The EPA submitted a biological evaluation to the NMFS on July 30, 2010. See <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2010-0257-0944>

August 9, 2011

Page 3

that EPA require annual reporting from applicators that discharge pesticides into U.S. waters. As the PGP was originally drafted, EPA did not require reporting, meaning that the agency would have no way of determining when, where, or even how much of a given pesticide was discharged into U.S. waters. Mandatory reporting of discharges of pollutants into waters of the U.S. is a critical component of any effective CWA permit. Without a reporting requirement, EPA and NMFS would be forced to operate in the dark, and would not be able to take informed future actions to preserve water quality or protect endangered species from excessive discharges of pesticides. Finally, NMFS recommended that EPA develop and implement a monitoring plan for the presence of pesticides in habitats of endangered or threatened species. This monitoring will provide EPA and NMFS with the baseline information needed to make future informed decisions on when or how to regulate pesticides under the CWA.

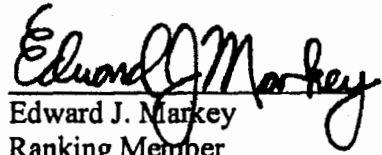
If adopted, none of these three RPAs would impose significant additional burdens in the implementation of the PGP. Staff from NMFS has assured my staff that, given the limited overlap between the presence of endangered species and locations where the PGP will apply, that it anticipates that no pesticide applicators will be affected in Delaware or Vermont by the conservation measures contained in the RPAs. NMFS also anticipates that only a small number of pesticide applicators will be affected in the District of Columbia, Idaho, Washington, Massachusetts, New Hampshire, or on Tribal lands.¹⁰ Furthermore, the monitoring and reporting requirements contained in NMFS' biological opinion will likely lead to a more effective and efficient implementation of the PGP in the future. Finally, adopting the NMFS' RPAs or developing similar measures will demonstrate that EPA is able to successfully reconcile its obligations under both the ESA and the CWA to fully protect our environment, our drinking water, and our nation's most endangered species. Accordingly, we urge you to adopt the RPAs provided in the NMFS biological opinion in the final rule for the PGP.

¹⁰ The RPAs will only apply where there is overlap with ESA-listed species. There is only one mosquito abatement district in the District of Columbia and it is not expected to directly discharge into rivers so the RPA will not apply. In Idaho, there are no mosquito abatement districts where ESA listed species occur. In Washington State, an existing biological opinion already is in place regarding pesticides. In Massachusetts and New Hampshire, ESA-listed species overlap limited to the Merrimack, Connecticut and Piscataqua Rivers and mosquito control operators are not expected to directly discharge into these rivers. Tribal lands that overlap with the distribution of ESA-listed species under NOAA Fisheries' jurisdiction are confined to California and the Pacific Northwest, where an existing biological opinion is in place regarding pesticides.

Director Jackson
August 9, 2011
Page 4

Thank you very much for your attention to this important matter. If you have any questions or concerns, please have your staff contact Brett Hartl of the Natural Resources Committee Democratic Staff at 202-225-6065 or Dr. Avenel Joseph of Rep. Markey's staff at 202-225-2836.

Sincerely,



Edward J. Markey
Ranking Member
Natural Resources Committee



Grace Napolitano
Ranking Member
Subcommittee on Water and Power



AL-11-001-3457
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 16 2011

OFFICE OF
WATER

The Honorable Edward J. Markey
Ranking Member
Committee on Natural Resources
House of Representatives
Washington, DC 20515

Dear Congressman Markey:

Thank you for your letter of August 9, 2011, to Administrator Lisa Jackson regarding the Pesticide General Permit (PGP). As the acting Assistant Administrator for the Office of Water, Administrator Jackson asked that I respond to your letter. As you mentioned, the EPA is developing the PGP to cover pesticide discharges to waters of the United States under the Clean Water Act in response to a 2009 decision by the Sixth Circuit Court of Appeals (*National Cotton Council, et al. v. EPA*).

The EPA is in the process of working with the National Marine Fisheries Service (NMFS) to complete consultation on the PGP as required under the Endangered Species Act (ESA). On June 24, 2011, the EPA posted for public comment the draft Biological Opinion that had been developed by NMFS. We have forwarded the public comments to NMFS that were received during the comment period on the Reasonable and Prudent Alternative (RPA) in the draft Biological Opinion NMFS submitted to EPA on June 17, 2011. NMFS is considering these comments as they finalize their Biological Opinion.

The agency is committed to protecting species under the ESA, and will continue to work with NMFS to ensure the permit will not jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of critical habitat that has been designated for such species.

Thank you for your support as the EPA continues in this effort to protect human health and our nation's waters, and thank you again for sharing your concerns with us. If you have further questions, please contact me or your staff may call Greg Spraul in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0255.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy K. Stoner".

Nancy K. Stoner
Acting Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 16 2011

OFFICE OF
WATER

The Honorable Grace Napolitano
Ranking Member
Subcommittee on Water and Power
Committee on Natural Resources
House of Representatives
Washington, DC 20515

Dear Congresswoman Napolitano:

Thank you for your letter of August 9, 2011, to Administrator Lisa Jackson regarding the Pesticide General Permit (PGP). As the acting Assistant Administrator for the Office of Water, Administrator Jackson asked that I respond to your letter. As you mentioned, the EPA is developing the PGP to cover pesticide discharges to waters of the United States under the Clean Water Act in response to a 2009 decision by the Sixth Circuit Court of Appeals (*National Cotton Council, et al. v. EPA*).

The EPA is in the process of working with the National Marine Fisheries Service (NMFS) to complete consultation on the PGP as required under the Endangered Species Act (ESA). On June 24, 2011, the EPA posted for public comment the draft Biological Opinion that had been developed by NMFS. We have forwarded the public comments to NMFS that were received during the comment period on the Reasonable and Prudent Alternative (RPA) in the draft Biological Opinion NMFS submitted to EPA on June 17, 2011. NMFS is considering these comments as they finalize their Biological Opinion.

The agency is committed to protecting species under the ESA, and will continue to work with NMFS to ensure the permit will not jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of critical habitat that has been designated for such species.

Thank you for your support as EPA continues in this effort to protect human health and our nation's waters, and thank you again for sharing your concerns with us. If you have further questions, please contact me or your staff may call Greg Spraul in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0255.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy K. Stoner".

Nancy K. Stoner
Acting Assistant Administrator

DOC HASTINGS, WA
CHAIRMAN
DON YOUNG, AK
JOHN J. DUNCAN, JR., TN
LOUIE GOHMERT, TX
ROB BISHOP, UT
DOUG LAMBORN, CO
ROBERT J. WITTMAN, VA
PAUL C. BROWN, GA
JOHN FLEMING, LA
MIKE COFFMAN, CO
TOM MCCLINTOCK, CA
GLENN THOMPSON, PA
JEFF DENHAM, CA
DAN BENISHKE, MI
DAVID RIVERA, FL
JEFF DUNCAN, SC
SCOTT R. TIPTON, CO
PAUL A. GOSAR, AZ
RAUL R. LABRADOR, ID
KRISTI L. NOEM, SD
STEVE SOUTHERLAND II, FL
BILL FLDRES, TX
ANDY HARRIS, MD
JEFFREY M. LANDRY, LA
CHARLES J. "CHUCK" FLEISCHMANN, TN
JON RUNYAN, NJ
BILL JOHNSON, OH

TODD YOUNG
CHIEF OF STAFF

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

EDWARD J. MARKEY, MA
RANKING DEMOCRATIC MEMBER
DALE E. KILDEE, MI
PETER A. DEFazio, OR
ENI F.H. FALOMAVAEGA, AS
FRANK PALLONE, JR., NJ
GRACE F. NAPOLITANO, CA
RUSH D. HOLT, NJ
RAUL M. GRIJALVA, AZ
MADELEINE Z. BORDALLO, GU
JIM COSTA, CA
DAN BOREN, OK
GREGORIO KILILI CAMACHO SABLAN, CNMI
MARTIN HEINRICH, NM
BEN RAY LUJAN, NM
DONNA M. CHRISTENSEN, VI
JOHN P. SARBANES, MD
BETTY SUITON, OH
NIKI TSONGAS, MA
PEDRO R. PIERLUISI, PR
JOHN GARAMENDI, CA
COLLEEN W. HANABUSA, HI

JEFFREY DUNCAN
DEMOCRATIC STAFF DIRECTOR

August 9, 2011

AL-11-001-4260

NO

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Jackson,

The Environmental Protection Agency (EPA) is currently finalizing a general permit for the application of pesticides to U.S. waters, known as the Pesticide General Permit (PGP).¹ We are concerned that the draft PGP, as written, will not be sufficiently protective for endangered species, and strongly urge you to adopt the simple conservation measures recommended by the National Marine Fisheries Service (NMFS) in its recent biological opinion for the PGP.²

In the 40 years that the EPA has administered the Clean Water Act (CWA),³ the agency has never issued a CWA permit that included limitations on the application of a pesticide directly into a body of water.⁴ This omission occurred because the EPA concluded that the registration and labeling requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)⁵ were fully adequate to protect the environment. Unfortunately, throughout the United States, the facts on the ground demonstrate that complying with the requirements of FIFRA has not resulted in our Nation's waters being fully protected. In fact, pesticide contamination is pervasive in our streams, rivers, and lakes, and has caused adverse impacts to both wildlife and human health. In

¹ A copy of the PGP permit can be found at: http://www.epa.gov/npdes/pubs/draftfinal_pgp.pdf

² The NMFS biological opinion was published on June 17, 2011 and can be found at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2010-0257-0945>

³ 33 U.S.C. § 1251 *et seq.*

⁴ See 71 Fed. Reg. 68,484 *Application of Pesticide to Waters of the United States in Compliance with FIFRA* (Nov. 27, 2006). "In the more than 30 years that EPA has administered the CWA, the Agency has never issued an NPDES permit for the application of a pesticide to or over water to target a pest that is present in or over the water. Nor has the Agency ever stated in any general policy or guidance that an NPDES permit is required for such applications."

⁵ 7 U.S.C. § 136 *et seq.*

Director Jackson
August 9, 2011
Page 2

2006, the U.S. Geological Survey's (USGS) National Water-Quality Assessment Program detected measurable concentrations of pesticides in 90% of the surface water bodies it analyzed.⁶ In approximately 20% of the water bodies, the USGS detected 10 or more pesticide compounds. Most alarmingly, more than half of all agricultural streams sampled, and more than three-quarters of all urban streams sampled, had pesticides concentrations that exceeded one or more EPA limits for aquatic life—indicating a high likelihood that aquatic species are being adversely impacted by pesticide exposure.

In 2009, the Sixth Circuit Court of Appeals rejected the EPA's approach on pesticide management and stated that the discharges of pesticides into waters of the United States must fully comply with the requirements of the CWA.⁷ In response to this decision, the EPA has been developing the PGP, which will require that pesticide applicators receive a permit under the CWA prior to the discharge of pesticides into U.S. waters that will include the circumstances under which such discharges can occur. The PGP will only apply in seven states, U.S. territories, and tribal lands where the EPA has primary responsibility for administering the CWA.⁸

Now that the EPA is finalizing the PGP it is important that this permit fully meets the statutory requirements of the CWA, FIFRA, and the Endangered Species Act (ESA). To its credit, the EPA did initiate the necessary consultations under Section 7 of the ESA to determine whether the issuance of the PGP might jeopardize the existence of any endangered or threatened species.⁹ In response to this consultation, the National Marine Fisheries Service (NMFS) issued a biological opinion that determined that the issuance of the PGP, in its current form, would jeopardize the continued existence of 33 endangered species, including all of the listed salmon and steelhead stocks along the West Coast, Atlantic salmon and sturgeon, and the listed population of killer whales in Washington state. As required by the ESA, NMFS included in its draft biological opinion three Reasonable and Prudent Alternatives (RPAs) that would avoid the risk of jeopardy for these endangered species. To fully meet its obligations under the ESA, the EPA must adopt the RPAs contained within the biological opinion or it must adopt other similar conservation measures that accomplish the same goals.

We believe that the three RPAs provide commonsense adjustments to the PGP that the EPA should adopt. First, NMFS recommended that EPA identify the pesticides covered by the PGP that are causing the most severe adverse impacts to endangered species and to require additional protective measures for this small subset of pesticides. Second, NMFS recommended

Director Jackson

⁶ Gilliom et. al. 2006. The Quality of Our Nation's Waters-Pesticides in the Nation's Streams and Ground Water, 1992-2001, p 172

⁷ *National Cotton Council, et al. v. EPA* (6th Cir. 2009).

⁸ The PGP will apply in Vermont, Delaware, Idaho, Washington, Massachusetts, New Hampshire, the District of Columbia, and on Tribal lands.

⁹ The EPA submitted a biological evaluation to the NMFS on July 30, 2010. See <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2010-0257-0944>

August 9, 2011

Page 3

that EPA require annual reporting from applicators that discharge pesticides into U.S. waters. As the PGP was originally drafted, EPA did not require reporting, meaning that the agency would have no way of determining when, where, or even how much of a given pesticide was discharged into U.S. waters. Mandatory reporting of discharges of pollutants into waters of the U.S. is a critical component of any effective CWA permit. Without a reporting requirement, EPA and NMFS would be forced to operate in the dark, and would not be able to take informed future actions to preserve water quality or protect endangered species from excessive discharges of pesticides. Finally, NMFS recommended that EPA develop and implement a monitoring plan for the presence of pesticides in habitats of endangered or threatened species. This monitoring will provide EPA and NMFS with the baseline information needed to make future informed decisions on when or how to regulate pesticides under the CWA.

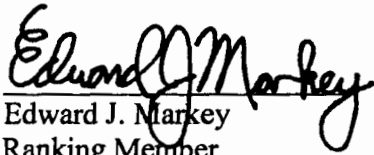
If adopted, none of these three RPAs would impose significant additional burdens in the implementation of the PGP. Staff from NMFS has assured my staff that, given the limited overlap between the presence of endangered species and locations where the PGP will apply, that it anticipates that no pesticide applicators will be affected in Delaware or Vermont by the conservation measures contained in the RPAs. NMFS also anticipates that only a small number of pesticide applicators will be affected in the District of Columbia, Idaho, Washington, Massachusetts, New Hampshire, or on Tribal lands.¹⁰ Furthermore, the monitoring and reporting requirements contained in NMFS' biological opinion will likely lead to a more effective and efficient implementation of the PGP in the future. Finally, adopting the NMFS' RPAs or developing similar measures will demonstrate that EPA is able to successfully reconcile its obligations under both the ESA and the CWA to fully protect our environment, our drinking water, and our nation's most endangered species. Accordingly, we urge you to adopt the RPAs provided in the NMFS biological opinion in the final rule for the PGP.

¹⁰ The RPAs will only apply where there is overlap with ESA-listed species. There is only one mosquito abatement district in the District of Columbia and it is not expected to directly discharge into rivers so the RPA will not apply. In Idaho, there are no mosquito abatement districts where ESA listed species occur. In Washington State, an existing biological opinion already is in place regarding pesticides. In Massachusetts and New Hampshire, ESA-listed species overlap limited to the Merrimack, Connecticut and Piscataqua Rivers and mosquito control operators are not expected to directly discharge into these rivers. Tribal lands that overlap with the distribution of ESA-listed species under NOAA Fisheries' jurisdiction are confined to California and the Pacific Northwest, where an existing biological opinion is in place regarding pesticides.

Director Jackson
August 9, 2011
Page 4

Thank you very much for your attention to this important matter. If you have any questions or concerns, please have your staff contact Brett Hartl of the Natural Resources Committee Democratic Staff at 202-225-6065 or Dr. Avenel Joseph of Rep. Markey's staff at 202-225-2836.

Sincerely,



Edward J. Markey
Ranking Member
Natural Resources Committee



Grace Napolitano
Ranking Member
Subcommittee on Water and Power



AL-11-001-3184
NE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 29 2011

THE ADMINISTRATOR

The Honorable Ed Markey
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Markey:

I am pleased to support the charter renewal of the Clean Air Scientific Advisory Committee (CASAC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The CASAC is in the public interest and supports the U.S. Environmental Protection Agency (EPA) in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Committee will be in effect for two years from the date it is filed with Congress. After the two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App.2 § 14).

If you have any questions or comments, please contact me or your staff may contact Clara Jones in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3701.

Sincerely,

A handwritten signature in black ink, which appears to read "Lisa P. Jackson", is written over a horizontal line.

Lisa P. Jackson

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

CLEAN AIR SCIENTIFIC ADVISORY COMMITTEE

1. **Committee's Official Designation (Title):**

Clean Air Scientific Advisory Committee (CASAC)

2. **Authority:**

Section 109 of the Clean Air Act (CAA) enacted on August 7, 1977 (42 U.S.C. § 7409), specifically directs the EPA Administrator to review the air quality criteria published under section 108 and the national ambient air quality standards (NAAQS) promulgated under section 109 and to make such revisions in such criteria and standards and promulgate such new standards as may be appropriate no later than every five years. Section 109 also directs the Administrator to establish this committee to review the criteria and standards promulgated, and provide other related scientific and technical advice. This charter renews the Clean Air Scientific Advisory Committee (CASAC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2.. CASAC is in the public interest and supports the U.S. Environmental Protection Agency (EPA or Agency) in performing its duties and responsibilities. The charter has been renewed every two years, with the last renewal on July 31, 2009.

3. **Objectives and Scope of Activities:**

The CASAC is identified as a scientific/technical advisory committee. As required by CAA section 109(d), the CASAC will:

- a. review the criteria published under section 108 of the Clean Air Act and the national primary and secondary ambient air quality standards and recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate;
- b. advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards;
- c. describe the research efforts necessary to provide the required information;
- d. advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity; and
- e. advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

4. **Description of Committees Duties:**

The duties of CASAC are to provide advice and recommendations to EPA.

5. **Official(s) to Whom the Committee Reports:**

The Committee will submit advice and recommendations and report to the EPA Administrator.

6. **Agency Responsible for Providing the Necessary Support:**

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the EPA Science Advisory Board (SAB) Staff Office, Office of the Administrator (AO).

7. **Estimated Annual Operating Costs and Work Years:**

The estimated annual operating cost of the CASAC is \$1,500,000 which includes 5.0 work-years of support.

8. **Designated Federal Officer:**

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all meetings and each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. **Estimated Number and Frequency of Meetings:**

The CASAC and its subgroups expects to meet approximately twelve (12) to fifteen (15) times a year. Meetings may occur approximately once every four (4) weeks or as needed and approved by the Designated Federal Officer (DFO). EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, CASAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code. Interested persons may attend meetings, appear before the committee, or file comments with the CASAC.

10. **Duration and Termination:**

CASAC will be needed on a continuing basis. This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed in accordance with section 14 of FACA.

11. Member Composition:

CASAC will be composed of seven (7) members. The Administrator will appoint a Chairperson and six members including, as required by CAA section 109(d), at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies. Members shall be persons who have demonstrated high levels of competence, knowledge, and expertise in the scientific/technical fields relevant to air pollution and air quality issues. Members will generally serve as Special Government Employees (SGE).

12. Subgroups:

EPA, or CASAC with the Agency's approval, may form subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the CASAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee, nor can they report directly to the EPA.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with General Records Schedule 26, Item 2 or other approved agency records disposition schedule. These records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act and subject to the Freedom of Information Act, 5 U.S.C. 552.

July 15, 2011

Agency Approval Date

JUL 29 2011

Date Filed with Congress

COMMITTEES

NATURAL RESOURCES

RANKING DEMOCRAT

ENERGY AND COMMERCE

EDWARD J. MARKEY

7TH DISTRICT, MASSACHUSETTS

2108 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-2107

(202) 225-2836

DISTRICT OFFICES:

5 HIGH STREET, SUITE 101

MEDFORD, MA 02155

(781) 396-2900

188 CONCORD STREET, SUITE 102

FRAMINGHAM, MA 01702

(508) 875-2900

<http://markey.house.gov>

Congress of the United States

House of Representatives

Washington, DC 20515-2107

May 18, 2011

AL-11000-7925

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

I write to request your consideration of an October 15, 2010 application for a \$200,000 Brownfields cleanup grant that was submitted by Work Inc., a nonprofit organization headquartered in Quincy, MA that provides services to individuals with disabilities, more than 95% of whom live below the federal poverty level.

Work Inc., has been providing important job training, job placement, rehabilitation services, housing and case management services to individuals with disabilities for more than forty-five years. After finding out that their former headquarters had been contaminated with cadmium, a known carcinogen, it engaged neighborhood residents in planning for the site's rehabilitation and re-use as housing units (including affordable units). While it plans to provide \$67,000 of its own funds for these activities, Work Inc. requires EPA support to ensure that the project to remediate the contaminated site can go forward.

I strongly support this worthy application and respectfully request that it receive careful consideration. Thank you very much. If you have any questions or concerns, please have your staff contact Dr. Michal Freedhoff of my staff at 202-225-2836.

Sincerely,


Edward J. Markey



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN - 6 2011

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

The Honorable Edward J. Markey
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Thank you for your letter of May 18, 2011, supporting the Brownfields Grant Proposal from Work Inc. I appreciate your interest in the Brownfields Program and your support of the cleanup proposal.

As you know, the Small Business Liability Relief and Brownfields Revitalization Act assists states and communities throughout the country in their efforts to revitalize and reclaim brownfields sites. This program is an excellent example of the success that is possible when people of all points of view work together to improve the environment and their communities.

Last year's application process was highly competitive, with the EPA evaluating more than 600 grant proposals. From these proposals, the EPA announced the selection of approximately 300 grants.

The EPA's selection criteria for grant proposals are available in the *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants (August 2010)*, posted on our brownfields website at www.epa.gov/brownfields. Each proposal will be carefully reviewed and evaluated by a selection panel that applies these objective criteria in this highly competitive program. Be assured that the grant proposal submitted by Work Inc. will be given every consideration.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Raquel Snyder, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-9586.

Sincerely,

A handwritten signature in black ink that reads "Mathy Stanislaus". The signature is written in a cursive, flowing style.

Mathy Stanislaus
Assistant Administrator

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States

House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

December 22, 2010

The Honorable Lisa Jackson
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

I write to request that EPA accelerate its efforts to re-assess and review the safety and effectiveness of triclosan, a common ingredient in soaps and hand sanitizers (which are regulated by the Food and Drug Administration (FDA)), as well as by EPA which has approved its use as a pesticide for more than 100 types of consumer products including clothing, kitchenware and toys. EPA has already accumulated substantial data on the ability of triclosan to act as an endocrine-disruptor capable of interfering with hormones critical for normal development and reproduction. Moreover, in 2005 the FDA stated that there is no evidence that triclosan used in antibacterial soaps and washes provides any benefit over regular soap¹ and has concerns about the role that widespread use of antibacterial products play in the development of antibiotic-resistant strains of bacteria. However, as indicated in EPA's March 2010 letter to me,² the Agency has no plans to review its regulations governing the use of triclosan until 2013. Since this letter was sent, the Centers for Disease Control and Prevention (CDC) released its most updated data, which shows that there was a 42% increase in the amount of triclosan found in Americans in 2005-2006 versus data collected in 2003-2004. Furthermore, other data suggests that in addition to consumer products, Americans may also be exposed to this chemical through the consumption of contaminated food and water – particularly since over 95% of the uses of this chemical are in consumer products that are disposed of in residential drains.³ In light of this new information, I am requesting that you expedite your assessment of triclosan as a pesticide, and as necessary revise your regulations guiding the use of this chemical in consumer products, particularly those that are intended to come into contact with food or are marketed to children.

¹ <http://www.fda.gov/forconsumers/consumerupdates/ucm205999.htm>

² <http://markey.house.gov/docs/epatriclosanresponse.pdf>

³ Reiss, R., N. Mackay, C. Habig, and J. Griffin. 2002. *An ecological risk assessment for triclosan in lotic systems following discharge from wastewater treatment plants in the United States*, Environmental Toxicology and Chemistry 21(11): 2483-2492.

As indicated in EPA's March 2010 letter to me, the scientific literature has extensively linked triclosan to endocrine disrupting effects, with the ability to interfere with male and female reproductive hormones as well as the ability to alter thyroid function. Although triclosan was originally introduced in the healthcare setting as a surgical scrub, over the last decade there has been a rapid increase in the use of triclosan in a number of consumer products including soaps, kitchenware, clothes and toys. Despite their widespread use, in April 2010,⁴ the FDA reiterated its 2005 position⁵ that for certain applications, such as in soaps and handwashes, there is no evidence that the use of triclosan is superior to plain (non-triclosan-containing) soap and water. FDA also stated that it believed that existing data on the ability of triclosan to interfere with the body's normal hormonal functioning "raise valid concerns about the [health] effects of repetitive daily human exposure to these antiseptic ingredients."

In the past year, there have been additional scientific studies that have updated our understanding of the health impacts, exposure and environmental distribution of triclosan. For example, in July the CDC released updated bio-monitoring information that compared human concentrations of triclosan in 2005-2006 to what was found previously in 2003-2004⁶, when triclosan was found in 75% of all Americans.⁷ Based on the most comprehensive data available on chemical exposure, the CDC found that the concentration of triclosan in the urine of Americans has increased by an average of 42 % in all age groups, both genders and all reported ethnicities⁸. When looking only at children ages 6-11, the increase is over 55 %. While data on more recent exposure levels has not yet been released, one could reasonably assume that the concentration of triclosan in the human body and the prevalence of triclosan in the population has also continued to increase as the number of consumer products that contain this chemical also increased, and as concerns about the transmission of H1N1 or other flu strains mount each flu season.

Furthermore, data indicates that additional exposure to triclosan may be occurring through consumption of contaminated food and water. A 2006 Johns Hopkins Bloomberg School of Public Health study found that about 75 percent of triclosan makes it through water treatment methods, ending up in surface water and municipal sludge, which is commonly applied to agricultural crops as a fertilizer.⁹ Triclosan has also been found in 60 percent of U.S. streams according to a U.S. Geological Survey conducted between 1999 and 2000.¹⁰ Additionally, a

⁴ <http://www.fda.gov/forconsumers/consumerupdates/ucm205999.htm>

⁵ <http://www.webmd.com/news/20051020/fda-panel-no-advantage-to-antibacterial-soap>

⁶ <http://www.cdc.gov/exposurereport>

⁷ Calafat AM, Ye X, Wong LY, Reidy JA, Needham LL. 2008. *Urinary concentrations of triclosan in the U.S. population: 2003-2004*. *Environ Health Perspect*, 116(3):303-7.

⁸ http://www.cdc.gov/exposurereport/pdf/Update_Tables.pdf

⁹ Heidler J, Sapkota A, Halden RU, 2006. *Partitioning, Persistence, and Accumulation in Digested Sludge of the Topical Antiseptic Triclocarban during Wastewater Treatment*. *Environmental Science and Technology*, 40(11):3634-9.

¹⁰ Rolf U. Halden and Daniel H. Paull. 2005. *Co-Occurrence of Triclocarban and Triclosan in U.S. Water Resources*. *Environmental Science and Technology*, 39(6):1420-1426.

study published earlier this year¹¹ demonstrates the ability of plant crops to uptake triclosan that could be present in irrigation water or fertilizer, concentrating this toxic compound in their roots, leaves and beans, which are routinely harvested for food.

In light of the potential health and environmental damage caused by triclosan and doubts about its efficacy, several countries, including the European Union have taken action to ban or restrict the use of triclosan in many consumer products, including those that would come into contact with food – noting that the manufacturer of triclosan found its use in food contact products no longer “appropriate”. In the absence of imminent regulatory action in the U.S., in April 2010 I wrote letters to thirteen companies known to make and market U.S. products that contain triclosan asking them to voluntarily remove this chemical from products that will come into contact with food, consumer soaps (where FDA has found them to be relatively ineffective) and products marketed specifically for children. All of the companies¹² with triclosan-containing products that fall under EPA’s jurisdiction referenced EPA’s 2008 approval of triclosan as a pesticide as evidence that EPA was supportive of the safety and effectiveness of triclosan, and indicated that they had no intention of changing their corporate practices or formulations without sufficient guidance by the Agency – emphasizing the need for EPA to revisit and finalize regulations governing the use of triclosan as soon as possible, particularly for products that are marketed for children.

In light of the mounting evidence regarding the potential risks of triclosan as well as the increased levels observed to be present in the human body, I request that you provide a full and complete response that details the research activities and steps that EPA has taken in the last 12 months that contributes to the Agency’s review of its regulations guiding the use of triclosan. I also request that you accelerate efforts to complete your review and re-registration eligibility decision for triclosan prior to 2013. Please provide this response no later than December 22, 2010. Should you have any questions about this request, please have your staff contact Dr. Avenel Joseph of my staff or Dr. Michal Freedhoff of the Energy and Environment Subcommittee staff (202) 225-2836.

Sincerely,



Edward J. Markey
Chairman
Subcommittee on Energy and Environment

¹¹ Wu C, Spongberg AL, Witter JD, Fang M, Czajkowski KP. 2010. *Uptake of Pharmaceutical and Personal Care Products by Soybean Plants from Soils Applied with Biosolids and Irrigated with Contaminated Water*. Environ. Sci. Technol., 44 (16), 6157–6161

¹² One company declined to respond to my request.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 31 2011

The Honorable Edward J. Markey
U.S. House of Representatives
Washington, D.C. 20515

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

Dear Congressman Markey:

Thank you for your letter of December 22, 2010, to the U.S. Environmental Protection Agency (EPA) Administrator Lisa Jackson. I appreciate the opportunity to respond on behalf of the Administrator since my office is responsible for regulating pesticides. In response to your request that EPA accelerate its efforts to re-assess triclosan, I can report that we are currently involved in several key efforts that will ensure our review is timely, scientifically sound, and transparent with appropriate public participation.

On January 14, 2010, Beyond Pesticides and Food and Water Watch submitted a petition to EPA requesting that the Agency use its authority under various statutes to regulate triclosan. In response to the petition, EPA published a Federal Register Notice (FR Vol. 75, No. 235, December 8, 2010) seeking review and public comment. The same organizations also filed a related petition with the Food and Drug Administration (FDA). EPA and FDA are collaborating and sharing information on our respective triclosan activities, including FDA's ongoing development of its topical antimicrobial over-the-counter (OTC) drug monograph, and we intend to do so throughout the petition response process as well.

As mentioned in our letter to you dated March 5, 2010, EPA is in the process of updating the human exposure assessment for triclosan using the most current National Health and Nutrition Examination Survey (NHANES) data. These data, the NHANES 2007-2008 data set, were not available during the 2008 assessment, and will be used to provide the most current and comprehensive accounting for all sources of exposure to triclosan. This activity will allow us to be well prepared for registration review of triclosan in 2013.

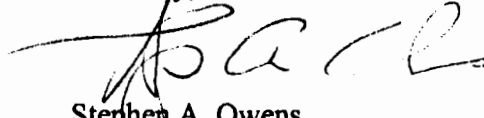
Additional preparation for the upcoming registration review of triclosan includes a comprehensive review of the available data on the occurrence of triclosan in the environment, including its presence in soil and water, is being initiated in order to update our assessment of the effects of triclosan on fish and other wildlife.

These activities reflect our ongoing evaluation of the science concerning triclosan and provide an overview of much of the work conducted over the past 12 months. In response to your request, I am also providing a summarized listing of all the research activities and steps taken to contribute to EPA's review of triclosan:

- Since the 2008 reregistration eligibility decision in which EPA concluded that there were potential effects of triclosan on the thyroid hormone system and estrogen hormone system in laboratory rats, EPA has expanded research investigations into these potential endocrine effects of triclosan.
- EPA's Office of Research and Development (ORD) has published research reporting the effects of triclosan on the thyroid hormone system in laboratory rats (Zorilla *et al.*, 2009; Paul *et al.*, 2010).
- ORD research (Stoker *et al.*, 2010) also reported results of the investigation of triclosan's effect on estrogen hormones using the Endocrine Disruptor Screening Program (EDSP) uterotrophic assay protocol.
- EPA's Office of Pesticide Programs (OPP) continues to collaborate with ORD to investigate the effects of triclosan on mammalian endocrine systems.
- ORD and OPP will complete research and analysis on the effect of triclosan on estrogen hormone systems by the end of 2011.
- A toxicological evaluation and dose response analysis of the thyroid hormone data from ORD has been conducted by OPP. OPP is in the process of finalizing the analysis and combining the results of this latest research on thyroid effects with the latest NHANES analysis to form the basis for a revised human health assessment for triclosan.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Mr. Sven-Erik Kaiser in EPA's Office of Congressional and Intergovernmental Relations at 202-566-2753.

Sincerely,



Stephen A. Owens
Assistant Administrator

AL-09-000-6370

THE WHITE HOUSE OFFICE
REFERRAL

RECEIVED

2009 APR 27 PM 3:31

OFFICE OF THE
EXECUTIVE SECRETARY

TO: ENVIRONMENTAL PROTECTION AGENCY

ACTION REQUESTED: APPROPRIATE ACTION

DESCRIPTION OF INCOMING:

ID: 1003774

MEDIA: FAX

DOCUMENT DATE: April 03, 2009

TO: PRESIDENT OBAMA

FROM: THE HONORABLE HENRY WAXMAN
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

SUBJECT: REQUESTS THAT THE PRESIDENT ADD HYDROFLUOROCARBONS (HFCs) TO
THE EXISTING MONTREAL PROTOCOL THIS YEAR

COMMENTS:

PROMPT ACTION IS ESSENTIAL - IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 5 WORKING DAYS OF RECEIPT,
UNLESS OTHERWISE STATED, PLEASE TELEPHONE THE UNDERSIGNED AT 205-2300.

RETURN ORIGINAL CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT) TO: DOCUMENT TRACKING UNIT,
ROOM 157, OFFICE OF RECORDS MANAGEMENT - THE WHITE HOUSE, 20500

**THE WHITE HOUSE
DOCUMENT MANAGEMENT AND
TRACKING WORKSHEET**



DATE RECEIVED: April 15, 2009

CASE ID: 1003774

NAME OF CORRESPONDENT: THE HONORABLE HENRY WAXMAN

SUBJECT: REQUESTS THAT THE PRESIDENT ADD HYDROFLUOROCARBONS (HFC's) TO THE EXISTING MONTREAL PROTOCOL THIS YEAR

ROUTE TO: AGENCY/OFFICE	(STAFF NAME)	ACTION	DISPOSITION
LEGISLATIVE AFFAIRS	PHIL SCHILIRO	ORG	04/18/2009
ACTION COMMENTS:			
DEPARTMENT OF STATE		R	04/18/2009
ACTION COMMENTS:			
✓ ENVIRONMENTAL PROTECTION AGENCY		A	04/18/2009
ACTION COMMENTS:			
ACTION COMMENTS:			
ACTION COMMENTS:			

COMMENTS: 1 ADDL SIGNEE

MEDIA TYPE: FAX

USER CODE:

ACTION CODES	DISPOSITION		
	TYPE RESPONSE	DISPOSITION CODES	COMPLETED DATE
A = APPROPRIATE ACTION	INITIALS OF SIGNER (W.H. STAFF) NRN = NO RESPONSE NEEDED OTBE = OVERTAKEN BY EVENTS	A = ANSWERED OR ACKNOWLEDGED	DATE OF ACKNOWLEDGEMENT OR CLOSEOUT DATE (MM/DD/YY)
B = RESEARCH AND REPORT BACK		C = CLOSED	
D = DRAFT RESPONSE		X = INTERIM REPLY	
I = INFO COPY/NO ACT NECESSARY			
R = DIRECT REPLY W/ COPY			
ORG = ORIGINATING OFFICE			

KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES
REFER QUESTIONS TO DOCUMENT TRACKING UNIT (202)-456-2590
SEND ROUTING UPDATES AND COMPLETED RECORDS TO OFFICE OF RECORDS MANAGEMENT - DOCUMENT TRACKING UNIT ROOM 437, EEOB.

**SCANNED
BY
ORM**

Apr-03-09 02:45pm From: Comm. Of Energy & Commerce,
HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

202-225-2525

1003774
T-031 P.002/003 F-728
JOE BARTON, TEXAS
RANKING MEMBER

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-8115

Majority (209) 225-2827
Minority (202) 225-3841
April 3, 2009

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

We are writing to encourage the Administration to offer an amendment to the Montreal Protocol this year to regulate the production and consumption of hydrofluorocarbons (HFCs), which are extremely potent greenhouse gases. To prevent catastrophic climate change, the United States and countries around the world will need to take a variety of steps. Although we strongly support a comprehensive international agreement on climate change, we believe that adding HFCs to the existing Montreal Protocol would be a sensible, cost-effective method of addressing a small but growing piece of the problem.

The Montreal Protocol is widely recognized as a tremendously successful international environmental agreement. It was negotiated in 1987 to stop the depletion of the stratospheric ozone layer by human-produced chemicals such as chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs). As a result of the Montreal Protocol's legally binding controls on the production and consumption of ozone depleting substances, global emissions of these gases are a small fraction of their 1990 levels. Although we still have a way to go, the ozone layer is on the path to recovery.

The Montreal Protocol has also provided substantial global warming benefits because ozone depleting chemicals like CFCs and HCFCs are also potent greenhouse gases. According to a recent scientific study, the Montreal Protocol will have reduced the total global warming impact from ozone depleting chemicals by about 50% in 2010.¹ This reduction will have the effect of delaying climate-related impacts by seven to twelve years.² In other words, without the Montreal Protocol, the world would be about a

¹ Proceedings of the National Academies of Science, *The Importance of the Montreal Protocol in Protecting Climate* (Mar. 20, 2007).

² *Id.*

decade further along the path to dangerous climate change, even after accounting for the global warming potential of HCFC substitutes.

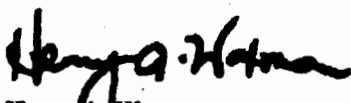
HFCs are the most common substitute for HCFCs. Although HFCs do not deplete the ozone layer, they are powerful greenhouse gases. HFCs currently account for only 2% of greenhouse gas emissions. Absent a new international agreement, however, HFC emissions are expected to steadily climb as HCFCs are phased-out.

We believe there are compelling reasons to take the approach that has worked so well and amend the Montreal Protocol to include a phase down of HFCs. The Protocol, which has been ratified by 194 countries, includes all of the key producer and user countries. Because the producers and users of HFCs overlap considerably with those of HCFCs, these stakeholders are already familiar with the Montreal Protocol process. The Montreal Protocol framework has Parties and staff with the technical expertise to phase-down HFCs, effective mechanisms for technology transfer, and a Multilateral Fund to assist developing countries with their phase-downs. The Parties have already acknowledged the importance of integrating climate change objectives into the Protocol.

The 21st Meeting of the Parties of the Montreal Protocol in November 2009 offers your Administration an early opportunity to restore U.S. leadership on climate and to create momentum for the December climate negotiations in Copenhagen. The Montreal Protocol framework has fostered successful international cooperation for over 20 years and can do so again. Proposing an amendment by the May deadline would send a strong signal that the U.S. is serious about tackling climate change.

Climate change is an enormous challenge. We look forward to working with you to harness the full potential of the Montreal Protocol to help meet this challenge.

Sincerely,



Henry A. Waxman
Chairman
Committee on Energy and Commerce



Edward J. Markey
Chairman
Subcommittee on Energy and
Environment

cc: Joe Barton
Ranking Member
Committee on Energy and Commerce

Fred Upton
Ranking Member
Subcommittee on Energy and Environment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 29 2009

OFFICE OF
AIR AND RADIATION

The Honorable Edward J. Markey
Chairman, Subcommittee on Energy and Environment
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515-6115

Dear Chairman Markey:

Thank you for your April 3, 2009 letter to President Obama, co-signed by one of your colleagues, encouraging the Administration to offer an amendment to the Montreal Protocol to regulate the production and consumption of hydrofluorocarbons (HFCs).

The Administration submitted a letter on May 4, 2009, expressing interest in this subject to the Ozone Secretariat of the Montreal Protocol. In that letter, the Administration expressed interest in how best to address the projected future growth in HFCs and how to promote the development of alternatives. However, in the brief time available to us, we have not been able to complete our analysis or to fully consider how amending the Montreal Protocol to address HFCs would affect negotiations now taking place under the U.N. Framework Convention on Climate Change with respect to the post-2012 period. For these reasons, we were not able to submit a specific amendment proposal.

We plan to continue actively studying and analyzing this issue. Recent analysis of various proposals by U.S. Environmental Protection Agency (EPA) staff shows that significant climate benefits could be achieved through a phase down of HFCs, assuming both developed and developing country commitments. The EPA analysis assumes a baseline that is an average of 2004, 2005, and 2006 consumption and control measures starting in 2012. EPA's analysis is based on stepwise reductions of approximately 10 percent of baseline by 2015, 25 percent by 2020, 50 percent by 2030, and 65 percent by 2039. It also assumes a 10-year delay between developed and developing country commitments. This phase down modeled by EPA estimates cumulative emissions reductions of roughly 66,000 to 80,000 million metric tons of carbon dioxide equivalent through 2050.

We note that the Governments of Mauritius and the Federated States of Micronesia have submitted a specific proposal to amend the Montreal Protocol to provide for a phase down in HFC consumption and production. We understand that their action will put this issue on the agenda for the Meeting of the Parties to the Montreal Protocol in November. Their proposal will also help to focus discussion among Parties in connection with the July workshop in Geneva.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may call Josh Lewis, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-2095.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Craig". The signature is written in dark ink and is positioned above the printed name.

Elizabeth Craig
Acting Assistant Administrator

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOHN D. DINGELL, MICHIGAN
CHAIRMAN EMERITUS
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
FRANK PALLONE, JR., NEW JERSEY
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
ANNA G. ESHOO, CALIFORNIA
BART STUPAK, MICHIGAN
ELIOT L. ENGEL, NEW YORK
GENE GREEN, TEXAS
DIANA DEGETTE, COLORADO
VICE CHAIRMAN
LOIS CAPPS, CALIFORNIA
MIKE DOYLE, PENNSYLVANIA
JANE HARMAN, CALIFORNIA
JAN SCHAKOWSKY, ILLINOIS
CHARLES A. GONZALEZ, TEXAS
JAY INSLEE, WASHINGTON
TAMMY BALDWIN, WISCONSIN
MIKE ROSS, ARKANSAS
ANTHONY D. WEINER, NEW YORK
JIM MATHESON, UTAH
G.K. BUTTERFIELD, NORTH CAROLINA
CHARLIE MELANCON, LOUISIANA
JOHN BARROW, GEORGIA
BARON P. HILL, INDIANA
DORIS D. MATSUI, CALIFORNIA
DONNA CHRISTENSEN, VIRGIN ISLANDS
KATHY CASTOR, FLORIDA
JOHN SARBANES, MARYLAND
CHRISTOPHER MURPHY, CONNECTICUT
ZACHARY T. SPACE, OHIO
JERRY MCNERNEY, CALIFORNIA
BETTY SUTTON, OHIO
BRUCE BRALEY, IOWA
PETER WELCH, VERMONT

AL-09-000-3946

JOE BARTON, TEXAS
RANKING MEMBER

RALPH M. HALL, TEXAS
FRED UPTON, MICHIGAN
CLIFF STEARNS, FLORIDA
NATHAN DEAL, GEORGIA
ED WHITFIELD, KENTUCKY
JOHN SHIMKUS, ILLINOIS
JOHN B. SHADDEG, ARIZONA
ROY BLUNT, MISSOURI
STEVE BUYER, INDIANA
GEORGE RADANOVICH, CALIFORNIA
JOSEPH R. PITTS, PENNSYLVANIA
MARY BONO MACK, CALIFORNIA
GREG WALDEN, OREGON
LEE TERRY, NEBRASKA
MIKE ROGERS, MICHIGAN
SUE WILKINS MYRICK, NORTH CAROLINA
JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA
MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE
PHIL GINGREY, GEORGIA
STEVE SCALISE, LOUISIANA

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

MAJORITY (202) 225-2927
FACSIMILE (202) 225-2525
MINORITY (202) 225-3841

energycommerce.house.gov

March 20, 2009

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

The Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations are investigating the August 28, 2008, explosion at the Bayer CropScience chemical facility in Institute, West Virginia. We have scheduled a hearing on Thursday, April 21, 2009, to examine the causes of the accident, the adequacy of the response, and the scope of information provided to first responders, employees, and the public.

Under the Emergency Planning and Community Right-to-Know Act and Clean Air Act, chemical facilities must identify potential consequences of accidental chemical releases, prepare emergency response plans, and immediately report any accidental release. According to press reports, EPA indicated in September that it planned to review whether Bayer CropScience violated any of these requirements in the aftermath of the explosion on August 28, 2008.¹

To assist the Subcommittee in preparing for the hearing, we request that you provide:

1. All documents and communications, including e-mails, relating to:
 - a. the August 28, 2008, explosion, Bayer CropScience's response to the explosion, or any local, state, or federal investigations into the explosion;
 - b. the possible public release of information regarding the explosion; and

¹ EPA to Investigate Bayer's Reporting Delay in Institute Blast, Charleston Gazette (Sept. 6, 2008).

The Honorable Lisa P. Jackson
March 20, 2009
Page 2

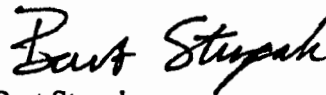
2. The most recent Risk Management Plan submitted to EPA for the Bayer CropScience facility in Institute, West Virginia, including any corrections submitted to reflect new accident history and incident investigation elements.

Please produce the requested documents by Friday, April 3, 2009. We also request that you provide a briefing to Committee staff by this date. Attachments to this letter provide additional information about responding to Committee document requests. If you have any questions regarding this request, please contact David Levis or Theodore Chuang with the Committee staff at (202) 226-2424.

Sincerely,



Henry A. Waxman
Chairman



Bart Stupak
Chairman
Subcommittee on Oversight and
Investigations



Edward J. Markey
Chairman
Subcommittee on Energy
and the Environment

Enclosure

cc. Joe Barton,
Ranking Member

Greg Walden,
Ranking Member,
Subcommittee on Oversight and Investigations

Fred Upton,
Ranking Member,
Subcommittee on Energy and the Environment

**Responding to Document Requests from the
Committee on Energy and Commerce**

In responding to the document request from the Committee on Energy and Commerce, please apply the instructions and definitions set forth below.

Instructions

1. In complying with the request, you should produce all responsive documents in your possession, custody, or control.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.
4. Each document produced should be produced in a form that renders the document capable of being copied.
5. When you produce documents, you should identify the paragraph or clause in the Committee's request to which the documents respond.
6. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should be provided in an accompanying index.
8. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a nonidentical or identical copy of the same document.
9. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you should consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

Documents produced in an electronic format should also be produced in a searchable format.

10. In the event that a responsive document is withheld on any basis, you should provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
11. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
12. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
13. This request is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
14. All documents should be bates-stamped sequentially and produced sequentially.
15. Two sets of documents should be delivered, one set to the majority staff and one set to the minority staff. The majority set should be delivered to the majority staff in Room 316 of the Ford House Office Building, and the minority set should be delivered to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.
16. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "documents in your possession, custody, or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures,

proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

AL-09-000-3946



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

APR 2 2009

The Honorable Edward J. Markey
Chairman, Subcommittee on Energy and the Environment
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of March 20, 2009 to the U.S. Environmental Protection Agency (EPA) concerning the August 28, 2008 explosion at the Bayer CropScience facility in Institute, West Virginia.

EPA Region III is in the process of gathering the responsive documents requested in your letter and will be providing them to our Headquarters' Office of Congressional and Intergovernmental Relations (OCIR) for final review and release to your office.

If you have any questions, please do not hesitate to contact me or have your staff contact Mrs. Jessica Greathouse, EPA's West Virginia Liaison, at 304-234-0275.

Sincerely,

A handwritten signature in cursive script, reading "William T. Wisniewski".

William T. Wisniewski
Acting Regional Administrator



AL-06-001-5856

Congress of the United States
Washington, DC 20515

September 26, 2006

The Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

Dear Mr. Johnson:

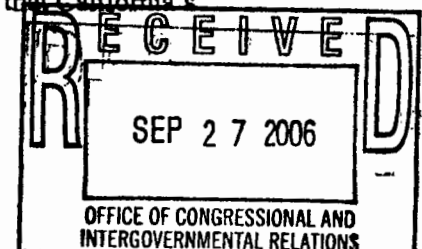
We are writing to urge you to grant California's waiver request that will allow California and ten other leading states to adopt technically feasible and cost-effective emissions standards to reduce global warming pollution from new passenger vehicles.

In late 2004, California adopted new standards requiring cars and light-duty trucks to limit emissions that contribute to global warming. The standards begin with the 2009 model year and phase-in gradually over eight years. By the 2016 model year, they would cut global warming pollution from new vehicles by almost 30 percent. Ten other states -- Connecticut, Maine, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington -- have already adopted these standards and others are considering them. Together, these eleven states' consumers buy approximately one-third of the new vehicles sold nationwide each year.

These standards are based on technologies available today (not potential new technologies), and give automakers flexibility to apply any technology they choose to reduce vehicles' emissions of greenhouse gases. The standards will also save consumers hundreds of dollars in fuel and maintenance costs.

When Congress adopted the Clean Air Act in 1970, California led the country in requiring cleaner automobiles. Congress recognized this leadership by guaranteeing California's right to set its own more stringent emissions controls on motor vehicles. It also allowed other states to adopt California's standards. This right is subject only to the requirement that California receive a waiver from EPA under section 209(b) of the Clean Air Act, which California has requested. The waiver requirement aims to ensure that state standards are at least as protective as the federal standards.


EPA has routinely granted California's waiver requests over 40 times in the last three decades. EPA has repeatedly found that California's motor vehicle emissions control program is more protective than the federal standards, that the State needs separate motor vehicle standards to address conditions in California, and that California's standards are feasible.

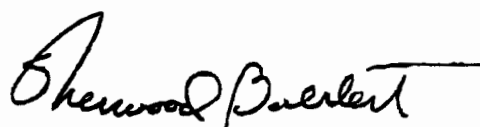


There is no basis for EPA to treat this request differently. California's requirements are clearly more protective than the federal standards, as the federal government has not yet set emissions standards for global warming pollution. Moreover, global warming poses a serious threat to California as it will worsen air quality, threaten water supplies for people and agriculture, and damage important ecological systems.

We urge you to grant the requested waiver without delay. The Clean Air Act expressly provided a mechanism for California and other states to take the lead in tackling new air pollution problems. EPA should support these efforts.


Sincerely,


HENRY A. WAXMAN
Member of Congress


SHERWOOD BOEHLERT
Member of Congress

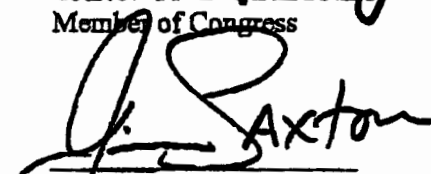
 
GEORGE MILLER
Member of Congress


DORIS O. MATSUI
Member of Congress

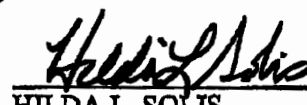

CHRISTOPHER SHAYS
Member of Congress


CAROLYN B. MALONEY
Member of Congress

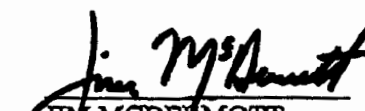

SHEILA JACKSON LEE
Member of Congress



JIM SAXTON
Member of Congress


NANCY L. JOHNSON
Member of Congress



HILDA L. SOLIS
Member of Congress



BRAD SHERMAN
Member of Congress

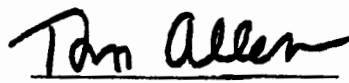

JIM MCDERMOTT
Member of Congress


JAMES P. MORAN
Member of Congress

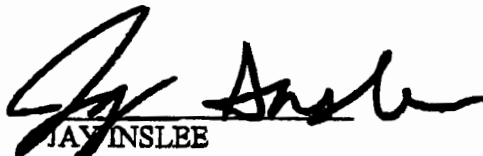

HOWARD L. BERMAN
Member of Congress


ZOE LOFGREN
Member of Congress



LYNN C. WOOLSEY
Member of Congress

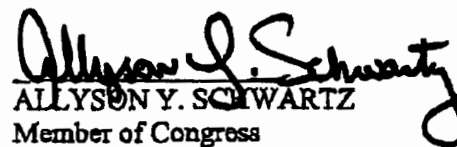

THOMAS H. ALLEN
Member of Congress



DENNIS J. KUCINICH
Member of Congress


JAY INSLEE
Member of Congress



ROBERT E. ANDREWS
Member of Congress


EARL BLUMENAUER
Member of Congress



ALLYSON Y. SCHWARTZ
Member of Congress


LOIS CAPPS
Member of Congress


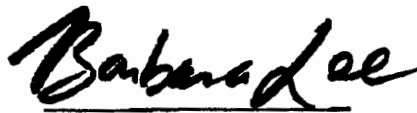
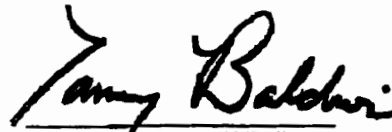



BARNEY FRANK
Member of Congress

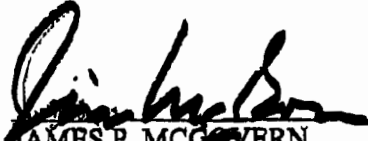

FRANK PALLONE JR.
Member of Congress


DIANA DEGETTE
Member of Congress

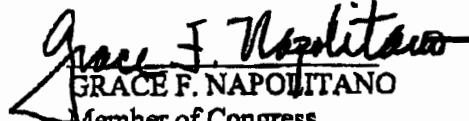

BETTY MCCOLLUM
Member of Congress


RUSH D. HOLT
Member of Congress

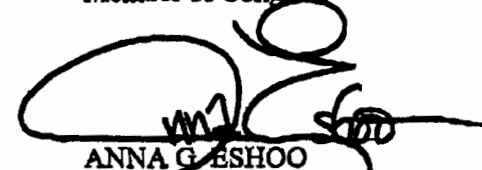

ADAM B. SCHIFF
Member of Congress
STEVE ISRAEL
Member of Congress
BARBARA LEE
Member of Congress
LLOYD DOGGETT
Member of Congress
LORETTA SANCHEZ
Member of Congress
ROBERT WEXLER
Member of Congress
MICHAEL H. MICHAUD
Member of Congress
TAMM BALDWIN
Member of Congress
MAURICE D. HINCHEY
Member of Congress
DONALD M. PAYNE
Member of Congress
DENNIS A. CARDOZA
Member of Congress
CURT WELDON
Member of Congress
EDWARD J. MARKEY
Member of Congress
JAMES R. LANGEVIN
Member of Congress
PATRICK J. KENNEDY
Member of Congress
JOHN W. OLVER
Member of Congress



JAMES P. MCGOVERN
Member of Congress



GRACE F. NAPOLITANO
Member of Congress



ANNA G. ESCH
Member of Congress



MIKE THOMPSON
Member of Congress




TOM LANTOS
Member of Congress




MICHAEL M. HONDA
Member of Congress



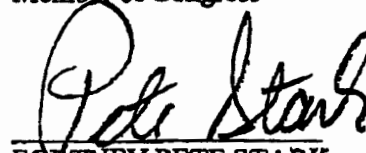
BOB FILNER
Member of Congress



STEPHEN F. LYNCH
Member of Congress




LINDA T. SANCHEZ
Member of Congress



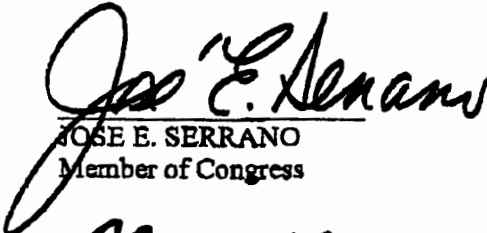
FORTNEY PETE STARK
Member of Congress



MARTIN T. MEEHAN
Member of Congress



ANTHONY D. WEINER
Member of Congress



JOSE E. SERRANO
Member of Congress



ROB SIMMONS
Member of Congress



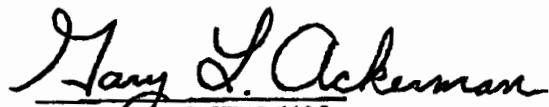
ALCEE L. HASTINGS
Member of Congress



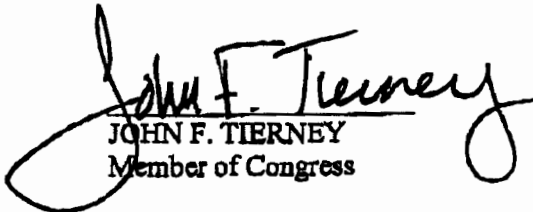
FRANK A. LOBIONDO
Member of Congress



EDOLPHUS TOWNS
Member of Congress



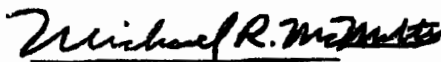
GARY L. ACKERMAN
Member of Congress



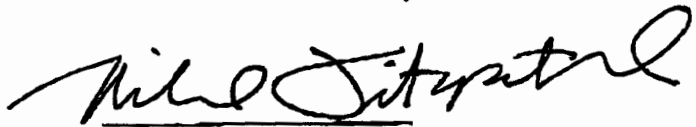
JOHN F. TIERNEY
Member of Congress



MICHAEL F. DOYLE
Member of Congress



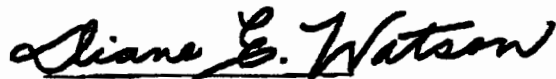
MICHAEL R. McNULTY
Member of Congress



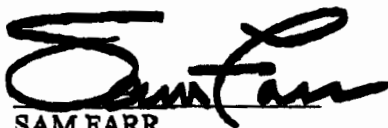
MICHAEL G. FITZPATRICK
Member of Congress



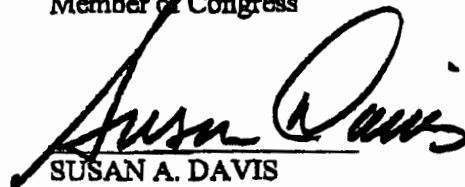
ELLEN O. TAUSCHER
Member of Congress



DIANE E. WATSON
Member of Congress



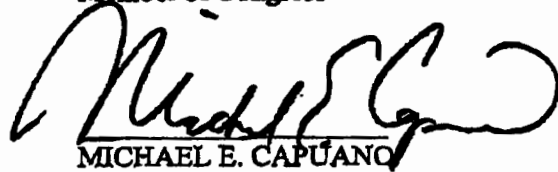
SAM FARR
Member of Congress



SUSAN A. DAVIS
Member of Congress



RICHARD E. NEAL
Member of Congress



MICHAEL E. CAPUANO
Member of Congress



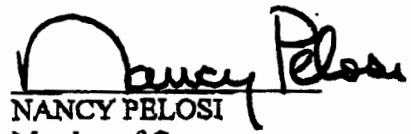
MAXINE WATERS
Member of Congress



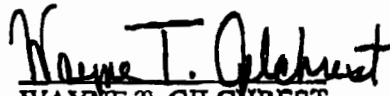
XAVIER BECERRA
Member of Congress




PETER A. DEFALIZO
Member of Congress



NANCY PELOSI
Member of Congress



WAYNE T. GILCREST
Member of Congress

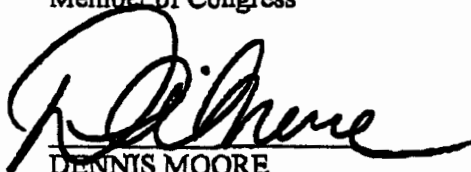

BERNARD SANDERS
Member of Congress


JERROLD NADLER
Member of Congress


RAUL GRIJALVA
Member of Congress

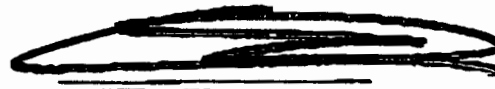

BRIAN BAIRD
Member of Congress



CHARLES F. BASS
Member of Congress

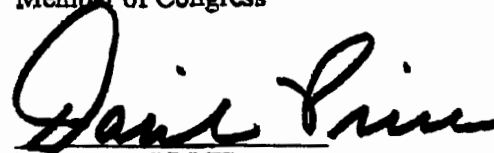

DENNIS MOORE
Member of Congress

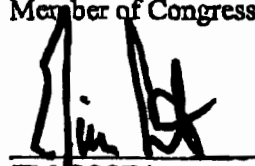

BILL PASCRELL, JR.
Member of Congress


DONNA M. CHRISTENSEN
Member of Congress


DAVID WU
Member of Congress

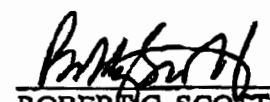

JESSE L. JACKSON, JR.
Member of Congress


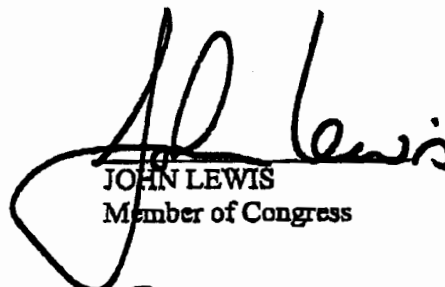
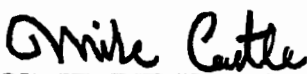
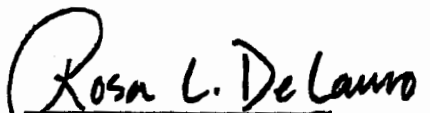

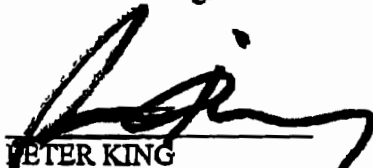
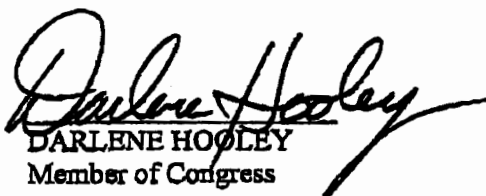
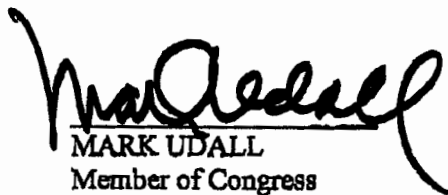


DAVID E. PRICE
Member of Congress


JIM COSTA
Member of Congress


CHAKA FATTAH
Member of Congress


RON KIND
Member of Congress


ROBERT C. SCOTT
Member of Congress


ADAM SMITH
Member of Congress
JOHN LEWIS
Member of Congress
MICHAEL N. CASTLE
Member of Congress
ELIOT L. ENGEL
Member of Congress
ROSA DELAURO
Member of Congress
JULIA M. CARSON
Member of Congress
PETER KING
Member of Congress
DARLENE HOOLEY
Member of Congress
MARK UDALL
Member of Congress
LUCILLE ROYBAL-ALLARD
Member of Congress
DAVID G. REICHERT
Member of Congress
CHRIS VAN HOLLEN
Member of Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 13 2006

The Honorable Edward J. Markey
U.S. House of Representatives
Washington, D.C. 20515

OFFICE OF
AIR AND RADIATION

Dear Congressman Markey:

Thank you for your letter dated September 26, 2006, also co-signed by your colleagues, regarding the motor vehicle emission standards for greenhouse gases adopted by California and subsequently adopted by ten other states. You have urged the Environmental Protection Agency (EPA) to grant California's waiver request, which would in turn allow the other states to implement such emission standards for motor vehicles.

Under section 209(a) of the Clean Air Act (Act) 42 U.S.C. 7543(b), all states are preempted from adopting or enforcing emission standards for new motor vehicles. Under section 209(b), however, EPA is directed to grant California a waiver of federal preemption, after notice and opportunity for public hearing, to adopt and enforce its own motor vehicle standards, unless EPA finds that: (a) California's determination that its standards will be, in the aggregate, as protective of public health and welfare as applicable Federal standards is arbitrary and capricious, (b) California does not need its standards to meet compelling and extraordinary conditions, or (c) California standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. Previous EPA waivers have stated that the "consistent with 202(a)" criteria requires that California's regulations must provide adequate lead time to implement the new technology giving appropriate consideration to the cost of compliance and must not impose inconsistent certification requirements (between federal and California) so as to make manufacturers unable to meet both sets of requirements with the same vehicle. As set forth in the Act, should EPA grant a waiver of federal preemption to California, other states can adopt and enforce standards identical to California's standards after giving requisite lead time to affected manufacturers.

We have not yet decided when to hold the public hearing on California's request. When the hearing is announced, EPA will also be accepting written comment on the request and will carefully review all information submitted by the California Air Resources Board (CARB), information provided at the waiver hearing and written comments in order to determine whether CARB has satisfied the statutory requirements necessary for EPA to grant this waiver.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Josh Lewis, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-2095.

Sincerely,

William L. Wehrum
Acting Assistant Administrator